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UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Civil Action No. 1:12-cv-000130-1D

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TOWN OF WOLFEBORO	:
Plaintiff,	:
	:
V.	:
	:
WRIGHT-PIERCE	:
	:
Defendant.	:
	:
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DEPOSITION OF JOHN G. DIGENOVA a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Patricia M. Haynes, a Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, CSR No.: 14620F, at the offices of Hinckley, Allen & Snyder, LLP, 28 State Street, Boston, Massachusetts, on Friday, November 15, 2013, commencing at 10:05 a.m.

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
JOHN G. DIGENOVA				
(By Ms. Cull)	4			

E X H I B I T S

<u>Exhibit No.</u>	<u>Page</u>
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P R O C E E D I N G S

JOHN G. DIGENOVA,

having been properly identified and duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION BY MS. CULL:

Q. Good morning. Thank you for coming here
today.

A. No problem.

Q. You are here to testify in an expert capacity,
correct?

A. Correct.

Q. Have you been deposed before?

A. I have not.

Q. I'm going to ask you a series of questions.
If there's anything that is unclear or you would like me
to restate, please ask me and I would be happy to do so.
I'm going to be showing you documents today, and I'll be
asking questions about those documents.

A. Okay.

Q. Please state your name, address and date of
birth for the record, please?

A. John DiGenova, 82 Mulberry Lane, Chester, New
Hampshire. Birth date is February 16, 1962.

Q. I have handed you a copy of Exhibit 94, which

1 is the Haley & Aldrich report. And I would like you to
2 turn to the back, please, to your resume. The education
3 details here, are they correct?

4 A. That is correct.

5 Q. Are the professional registrations here
6 correct?

7 A. Yes.

8 Q. So you're a professional engineer in all of
9 these states?

10 A. I am.

11 Q. Do you have any additional education
12 requirements or certifications that are not shown on
13 this resume?

14 A. Not besides professional development hours
15 which are required for my license. There's lots of
16 those. Yes, I do have, many of these states require
17 professional development hours and so I do stay current
18 on my professional requirements.

19 Q. I understand. It says you've been with Haley
20 & Aldrich for 27 years. Is that correct?

21 A. That is not correct. I'm been a geotechnical
22 engineer -- this is an old resume. It should be 29
23 years. Since I graduated with an undergrad degree, it's
24 been 29 years. I've been with Haley & Aldrich since

1 September of 1999. So that would be 14-1/2 years.

2 Q. Who did you work for before Haley & Aldrich?

3 A. It was a company called Site-Blauvelt
4 Engineers. They are now TransSystems, TRC. They got
5 bought.

6 Q. Which of their offices were you at?

7 A. I was at their Mt. Laurel, New Jersey, office.

8 Q. Are you currently in the Haley & Aldrich New
9 Hampshire office?

10 A. I am.

11 Q. How long have you been there?

12 A. I've been in there since January 1 of 2000.

13 Q. Did you go directly to that office when you
14 started working with Haley & Aldrich?

15 A. I started in the Boston office and transferred
16 after three months, four months.

17 Q. Did you join the company you just mentioned
18 directly out of college?

19 A. Yes, directly out of college in 1985.

20 Q. And you joined Haley & Aldrich directly from
21 there?

22 A. Yes.

23 Q. What is your current title?

24 A. Senior project manager, vice president.

1 Q. Just out of interest, Engineers Without
2 Borders looks interesting.

3 A. Engineers Without Borders, I'm a member and I
4 have been a member since 2007. I'm trying to start a
5 chapter -- we don't have a chapter in New Hampshire, so
6 I'm part of Boston's chapter right now. We are trying
7 to start one to support obviously what goes on around
8 the world.

9 Q. Have you done projects for them around the
10 world?

11 A. I have not yet. I would say I've been more a
12 charter member to the Boston society. It is something
13 I'm interested in. And UNH does have a Students Without
14 Borders chapter. The idea would be to have an adult
15 chapter or professional chapter and help them out with
16 their funding or if they need additional engineering.

17 Q. I presume it's like Doctors Without Borders?

18 A. It's a similar organization, yes.

19 Q. Have you ever testified at trial before?

20 A. I have not.

21 Q. What was the first RIB project that you worked
22 on?

23 A. Wolfeboro.

24 Q. Describe for me any projects that you have

1 worked on that are similar to Wolfeboro even though they
2 are not RIB projects.

3 A. Okay. What my capacity was at Wolfeboro was
4 to investigate two things, essentially two things, the
5 stability of the slope and the piping of soils coming
6 out of the slope.

7 Those mechanisms are common to many slope
8 stability problems which I have been involved with.
9 Some examples of that would be, it's in the resume, the
10 Conway Bypass.

11 We had many slopes, many being if you want to
12 quantify it greater than 30, and on those projects, we
13 had to look into the stability of the slope. We had to
14 look where water was going to potentially come out of
15 the slope and what we are going to do in advance for
16 stabilization and to prevent piping of materials.

17 I worked on, I don't know if it's in here,
18 there was a levy or a dam structure in New Jersey for
19 Monsanto. And there again we did extensive slope
20 stability analyses.

21 Essentially with slope stability, the slope
22 doesn't care where the water is coming from, whether it
23 be a rapid infiltration basin or just a natural area
24 above. So the conditions at Wolfeboro are very similar

1 to conditions I've seen at other slopes.

2 Q. Because it's basically putting water into an
3 area above the slope?

4 A. Correct.

5 Q. And these studies that you say involved
6 investigation into slope stability, at what stage of the
7 project were they performed?

8 A. During the investigation phase.

9 Q. Can you describe for me in general what an
10 investigation of slope stability entails?

11 A. An investigation would encompass explorations,
12 which may be borings, test pits, geo probes, various
13 geotechnical instrumentation, dilatometers, installation
14 of groundwater monitoring wells. That's the initial
15 data collection portion of an investigation.

16 That's not an exhaustive list but that gives
17 you a flavor of it. From that, you would run some soils
18 laboratory testing. Depending on the size, complexity
19 of the project and what the risks are associated with
20 the project -- for example, if there's a building on top
21 of the slope, your risks are higher because it's life
22 safety.

23 The geotechnical engineer would take a look at
24 the subsurface information, set up a laboratory testing

1 program, which would include a plethora of tests. It
2 could be gradation of materials, classifying the
3 materials so we get a good laboratory classification.

4 It could be running strength tests on the
5 materials, tri axle direct shear tests. If the
6 materials are soft, it could involve consolidation
7 tests. And that's not an exhaustive list either.

8 There's at least 40 or 50 types of soils
9 tests. Those are the main ones, but there's 40 or 50
10 soils tests that you could run. And you essentially,
11 I'd say the most important testing that you do is some
12 sort of, to get your arms around the strength parameters
13 of those soils.

14 At that point what would have to be done is
15 the geotechnical engineer looks at the subsurface data
16 and looks at the laboratory data and sets up a model,
17 which is just an idealized version of what you found
18 during those explorations.

19 You set up a slope stability model, running it
20 through an electronic program, we personally use Slide,
21 to assess stability. But there's Slope W, there's
22 various, X Stable, there's various slope stability
23 programs that can be utilized.

24 And they are all valid. They would give you

1 similar answers. You would investigate what sort of
2 factor of safety you would get under those conditions.
3 Factor of safety is essentially, to put it in simple
4 terms, you have all your driving forces on one side.
5 That's your denominator. And you have all your
6 resisting forces, and that's your numerator.

7 So you want your resisting forces to be
8 greater than your driving forces. It's the ratio of
9 those things. So the next thing, you would look at the
10 factor of safety. Every site is different.

11 Where life safety is involved or a major
12 structure, factors of safety tend to be greater than
13 1.5. That can vary though. And for less critical
14 structures where life safety is not involved, those
15 factors of safety could be as low as 1.3, even 1.1 in
16 some cases where a failure of that slope would not cause
17 damage to property or to people.

18 That's up to the geotechnical engineer to
19 decide. Some projects it's dictated by code. Such as
20 bridges and highways, you use the AASHTO building code.
21 And they will tell you what factors of safety, or the
22 International Code on Buildings. Although they do not
23 directly address the safety of factor that should be
24 used.

1 So the geotechnical engineer at that point
2 would say, okay, I've calculated a factor of safety, now
3 what do I have to do to have a long-term safe slope or
4 whatever the design life of that slope is.

5 Whether it be five years for construction or
6 some permanent, usually between 50 and 100 years,
7 someplace dictated in that range. So what do I have to
8 do to provide a stable system.

9 To the best of my recollection, that I think
10 summarizes what would have to be done in a typical
11 investigation. I'm sure I did not hit every single
12 point, but that will give you a flavor.

13 Q. Did S.W. Cole perform a slope stability
14 analysis of this site?

15 A. Yes, they did.

16 Q. Did the slope stability analysis that S.W.
17 Cole performed align more or less with what you've
18 described?

19 A. More or less.

20 Q. Did you agree with S.W. Cole's slope stability
21 analysis?

22 A. Yes.

23 Q. Did Wright-Pierce perform a slope stability
24 analysis at this site?

1 A. As far as I know, they did not.

2 Q. Have you visited the Wolfeboro site?

3 A. I have.

4 Q. How many times?

5 A. Twice.

6 Q. Was that on the 12th of November, 2012?

7 A. I do not recall the date. It was between the
8 winter, the end of the fall and the winter of 2012.

9 Q. If you turn to page five of your report,
10 you'll see some dates there under section 2.3. Was it
11 one of those dates?

12 A. It is one of those three dates. And I do not
13 recall whether it's the -- my best guess would either be
14 the 5th of December or the 14th of December. I do not
15 specifically know which date.

16 Q. And then is there another date you visited the
17 site?

18 A. I did.

19 Q. What was that?

20 A. That was in 2013. And I do not recall the
21 date of that visit. It was for a subsequent study.

22 Q. The first time you visited the site in the
23 winter of 2012, who was with you on that site visit?

24 A. Chris Jones.

1 Q. Anyone else?

2 A. Not that I'm aware of.

3 Q. Was Mr. Jones an employee of Haley & Aldrich?

4 A. He is.

5 Q. What's his title?

6 A. He's, I'm not sure of the exact title, I think
7 he's a senior hydrogeologist.

8 Q. What was the purpose of your visit to the site
9 that day?

10 A. To see what the existing, to observe the
11 existing conditions at the site.

12 Q. Did you take notes of your observations?

13 A. I did not.

14 Q. Did you take photographs of the observations?

15 A. I did.

16 Q. Do you know if Mr. Jones took notes?

17 A. I'm not sure. I don't think he did, but I'm
18 uncertain.

19 Q. What did you observe that day?

20 A. We went to the top of the slope and observed
21 the RIBs just to see if they were operational. And just
22 to see, to learn the lay of the land, you know, here's
23 where they are feeding in water.

24 So we walked around the top of the slope where

1 the RIBs were. We walked to an area of sink hole
2 activity. I'll point to it. Here's the road I believe
3 and it was right in this area over here.

4 Q. Just to the east of TP 8?

5 A. Approximately, yes. To the east of TP 8 and
6 to the west of the road. And then we also observed a
7 soil slough, a soil failure, to the east of the road in
8 about the same area.

9 Q. Did you observe anything else at the site that
10 day?

11 A. We walked along the slopes and did observe
12 sand boils primarily in those two areas.

13 Q. So were there areas you observed outside of
14 those areas?

15 A. I don't remember.

16 Q. You say you went back in 2013?

17 A. Correct.

18 Q. And who was with you on that visit?

19 A. Chris Jones. The same person.

20 Q. Anyone else?

21 A. On that site visit, there were three people
22 there from Wright-Pierce.

23 Q. Who was there from Wright-Pierce?

24 A. I don't recall their names.

1 Q. Mr. Atherton?

2 A. Yes.

3 Q. Mr. Brown?

4 A. Yes.

5 Q. Mr. Smith?

6 A. Yes. Thank you.

7 Q. What was discussed in that site visit?

8 A. I'm trying to recall that. We started at the
9 top at the RIB site. We walked along the east side of
10 the RIBs to observe the large stockpile of material that
11 exists, that was essentially the cut soils from
12 construction of the RIBs.

13 And one of the people from Wright-Pierce
14 indicated that these are the leftover materials from the
15 construction. The question was asked could they be used
16 as part of remediation of the slope. I do recall that
17 question.

18 Q. And what was the answer to that?

19 A. I said, "I don't know enough about it yet and
20 I'll have to think about it."

21 Q. Okay.

22 A. We walked in the areas of, the two areas that
23 I described earlier, to the southwest, to the west of
24 the road, and to the southwest and to the east of the

1 entrance road where sink hole activity was observed and
2 the soils, sloughing, the soil failure was observed.

3 And we looked into those areas. We looked at
4 those areas and the question was, "What do you think,
5 can it be fixed?" That was the question.

6 Q. Who asked you that question?

7 A. One of the gentlemen from Wright-Pierce.

8 Q. What was the answer to that?

9 A. I said most likely yes, but I would have to
10 investigate further.

11 Q. Have you examined the borings of this site?

12 A. I have reviewed the borings from the site.

13 MR. CORKUM: To be clear, the boring logs?

14 BY MS. CULL:

15 A. The boring logs for the site.

16 Q. Mr. Corkum and Donovan and Hatem have
17 indicated there are certain parts of this report that
18 you will be testifying to. I have marked those and they
19 are the only ones that I intend to question you on.

20 If when we get to them you think they have
21 been improperly allocated to you, please let me know.

22 A. Okay. My primary focus, as I stated, was
23 geotechnical related aspects and can it be repaired.
24 That was my primary focus. So details on what the RIB

1 loading was and how that affected ground water levels, I
2 left that to other professionals to assess.

3 As I said earlier, the slope doesn't care
4 where the water is coming from. So I left that for
5 someone else to assess. And I just looked at what's the
6 conditions and how can we fix it. So that's what I
7 predominantly focused on.

8 Q. For example, on the executive summary, I am
9 told you will be testifying on page three to points two
10 and three?

11 A. That is correct.

12 Q. Have you read the report produced by Mr.
13 Moore?

14 A. I have not.

15 Q. Have you read the second Fuss & O'Neil report?

16 A. Do you have it here?

17 Q. This is my copy.

18 A. I have not.

19 Q. Have you read the report by Professor Benoit?

20 A. I have.

21 Q. Did you agree with the contents of that
22 report?

23 A. I'd have to -- point by point I can't say yes.
24 I'd have to go through it point by point. I thought the

1 report was thorough, but I can't say I would agree with
2 it without additional review.

3 Q. So is it true to say that there are some parts
4 in here you might agree with and some parts that you
5 don't agree with?

6 A. That would be a true statement. It is
7 possible, yes.

8 Q. Professor Benoit says, "If Wright-Pierce
9 conducted a thorough investigation of the soil
10 characterization and included this information in their
11 model, the damage to the site as a result of high
12 groundwater levels and seepage forces to the down stream
13 slopes, wetlands and brooks would have been identified
14 and avoided." Do you agree with that statement?

15 MR. CORKUM: Objection.

16 BY MS. CULL:

17 A. Can I read it?

18 Q. Sure. Just the yellow.

19 MR. CORKUM: If you need to read the whole
20 report to comment on one sentence, do so.

21 BY MS. CULL:

22 A. I'd have to think about that and I would have
23 to, that's a petty strong statement I think that's made.
24 I think I would have to figure out what else is here and

1 see if I would say yes or no to that statement. Are you
2 looking for a yes or no answer?

3 Q. I'm going on the fact you said you read the
4 report. I'm just looking into the summaries and
5 conclusions and wondering whether you agreed with that?

6 A. I would have to, to make a statement that I
7 agreed with that particular statement, I think I would
8 have to review this in more detail. It's a pretty
9 general statement. I would have to, as I said, review
10 the entire report again.

11 And I think that would be a pretty bold
12 statement for a geotechnical engineer to make, just
13 based on an investigation you could identify every
14 potential area that could have problems.

15 That's a pretty bold statement the way he put
16 it. I can't say yes or no without re-reviewing the
17 information contained therein.

18 Q. The S.W. Cole report says that the recommended
19 loading for the site is 340,000 gpd, does it not?

20 MR. CORKUM: Objection.

21 BY MS. CULL:

22 Q. I'm giving you a copy of Exhibit 21, which is
23 a copy of the S.W. Cole report.

24 A. Would you restate the question?

1 Q. The S.W. Cole report recommended that the
2 capacity of the site, no more than 340,000 gpd be
3 discharged to the site.

4 MR. CORKUM: Objection.

5 BY MS. CULL:

6 A. Without me getting through all of it, could
7 you, is there someplace you have noted?

8 Q. If you look at E4 at the bottom of the page.

9 A. Okay.

10 Q. I believe S.W. Cole recommends that the flow
11 to RIBs one, two and three be reduced to 250,000 and the
12 flow to RIBs four and five be reduced to 50,000.

13 A. Can you restate the question?

14 Q. What is your understanding of S.W. Cole's
15 initial loading recommendations for the site?

16 A. I can't -- I think as I stated, when it came
17 to loading the site and groundwater levels, I did not
18 get into the details of that for my evaluation. So I
19 really can't comment on that.

20 Q. Can you comment on the basis of S.W. Cole's
21 recommendation, which I understood to be a slope
22 stability analysis?

23 A. I understood that S.W. Cole, what I've read of
24 what they have done, they performed a slope stability

1 analysis. And they were looking for factors of safety
2 that were above the 1.3, which is prudent, and then they
3 were assigning specific water loading values to those
4 factors of safety, which corresponded to particular
5 groundwater levels. That approach seems reasonable to
6 me.

7 Q. I'm looking further up the page, the first
8 full bullet where S.W. Cole finds that there was an
9 acceptable factor of safety at 300 gpd and unacceptable
10 for shallow failures for water levels at 400,000 and
11 500,000.

12 A. I'm just rereading what's here. Are you
13 asking me do I agree with that? It does state that.

14 Q. If you agreed with that?

15 A. Yes.

16 Q. Mr. Kastrinos testified yesterday that the
17 S.W. Cole analysis was performed on the original
18 topography at the site. Is that correct? Do you know
19 what the S.W. Cole analysis was based on?

20 A. I don't recall.

21 Q. Do you believe that it wasn't performed on the
22 original topography of the site?

23 A. I don't recall.

24 Q. Could the S.W. Cole analysis have been

1 performed back in 2007 when the site was being analyzed?

2 A. Can you state that again?

3 Q. Could the S.W. Cole analysis, the static slope
4 analysis, could that have been performed in 2007?

5 A. Could this have been performed in 2007? Yes.

6 Q. So if this had been performed in 2007 and the
7 risk to the slopes of failure at levels above 300 gpd
8 had been identified, could the damage to the site have
9 been avoided if the loading rates had been lowered?

10 A. Possibly.

11 Q. Why do you say possibly?

12 A. I can't speak for another geotechnical
13 engineer. I can't speak for S.W. Cole that they would
14 have assessed all the areas of the site needing
15 investigation.

16 Q. Have you done a slope stability analysis at
17 the site?

18 A. Yes.

19 Q. And did you analyze the site in its existing
20 condition?

21 A. Yes.

22 Q. What slope stability results did you find?

23 A. I can put it this way. It was similar to what
24 S.W. Cole found.

1 Q. If your analysis had been performed in 2007
2 and the capacity of the site had been adjusted to
3 reflect the slope stability concerns, could the damage
4 to the site have been avoided?

5 MR. CORKUM: Objection. Are you saying if
6 he were part of the team and part of the investigation
7 and had run the analysis? Who is the running the
8 analysis?

9 MS. CULL: No one ran the analysis.
10 That's why we are here.

11 BY MS. CULL:

12 Q. If this analysis had been run --

13 MR. CORKUM: By?

14 MS. CULL: By anyone.

15 MR. CORKUM: If I had run it, it wouldn't
16 have helped it.

17 BY MS. CULL:

18 Q. If Wright-Pierce had run it?

19 A. If Wright-Pierce or -- Wright-Pierce wouldn't
20 run a slope stability analysis.

21 Q. If they hired someone?

22 A. If they hired a competent geotechnical
23 engineer, I'd say there's a high probability that the
24 site damage could have been avoided.

1 Q. And are you aware that as part of this
2 project, the investigation into Wolfeboro's disposal
3 requirements, Wright-Pierce hired S.W. Cole to work on
4 this project?

5 A. Am I aware that they hired S.W. Cole?

6 Q. Yes.

7 A. Yes.

8 Q. Have you spoken to S.W. Cole in the process of
9 preparing the report?

10 A. No.

11 Q. Have you spoken to them at all regarding this
12 project?

13 A. No.

14 Q. Did you read the contracts between
15 Wright-Pierce and the town of Wolfeboro in preparing
16 your report?

17 A. I did not.

18 Q. Did you review the pleadings in the case?

19 A. Can you elaborate on that? The actual --

20 Q. The Complaint, the Answer to the Complaint and
21 other discovery, written discovery that's been
22 exchanged?

23 A. I think all, I'm not familiar with all legal
24 proceedings. All I've read is the actual Complaint

1 itself. I did not study it, but I read through it just
2 to try to understand.

3 Q. Did you read the Amended Complaint?

4 A. I do not know.

5 Q. How did you become involved in this case?

6 A. Internally within Haley & Aldrich, Mr.
7 Kastrinos was looking for a senior level experienced
8 geotechnical engineer to help out who would be able to
9 assess slope stability and remedial schemes and was also
10 a licensed engineer in New Hampshire.

11 Q. Did you have anyone assisting you on this
12 project?

13 A. With the geotechnical assessment, yes.

14 Q. Who was that?

15 A. Megan Hatton.

16 Q. Is she a Haley & Aldrich employee?

17 A. She is.

18 Q. Did you talk with any of the Wright-Pierce
19 employees in the process of drafting this report?

20 A. No, I did not.

21 Q. Did you speak to Mr. Jesse Schwalbaum in the
22 process of preparing the report?

23 A. No.

24 Q. Did you have any meetings with anyone from

1 Wright-Pierce?

2 A. No.

3 Q. I had --

4 A. Can I qualify the last answer? We did meet in
5 the offices of Donovan Hatem at one point. I don't
6 remember the date, but there were Haley & Aldrich and
7 Wright-Pierce people there. It was a general meeting
8 for discussion.

9 Q. Is this the Haley & Aldrich report, Exhibit
10 36?

11 A. Do I really have to flip through the pages to
12 -- yes.

13 Q. There are no rogue pages in there. David
14 would be all over that. As I said earlier, you have
15 been identified as testifying to certain sections of the
16 report. Again, if you believe for any reason that these
17 are not the sections that you should be talking to, just
18 let me know.

19 A. Okay.

20 Q. I would like you to turn if you would to page
21 three.

22 A. Okay.

23 Q. You say there halfway through bullet two that
24 you believe that the RIB system likely could be used at

1 current loading rates and likely higher loading rates.

2 What do you understand to be the current loading rates?

3 A. I would defer that question to the people who,
4 the other professionals in our company who actually look
5 into the current loading rates. And that would be Mr.
6 Kastrinos and Mr. Jones.

7 Q. Then you say there, "Likely higher loading
8 rates." What are those higher rates that you're
9 referring to there?

10 A. It was my understanding that it was the wish
11 of the town to have a loading rate on the RIBs of
12 600,000 gallons per day.

13 Q. Are you aware that the groundwater permit that
14 was issued for this RIB project was originally issued
15 for a loading rate of an annual average 600,000 gpd?

16 A. I'm not sure, not certain of the details.

17 Q. So when you're referring to this as the higher
18 loading rate is 600,000 gpd, is Haley & Aldrich
19 referring to an annual average of 600,000 or a daily cap
20 of 600,000?

21 A. I don't know the answer to that question.

22 Q. Has Haley & Aldrich, I'm looking at the
23 content of bullet two only, has Haley & Aldrich analyzed
24 the maximum flow that could be discharged to the site?

1 MR. CORKUM: On a daily basis or yearly
2 basis?

3 MS. CULL: On any basis.

4 BY MS. CULL:

5 Q. On any basis, on an annual average basis, on a
6 monthly basis, on a daily basis?

7 A. Our analysis was done after this report -- a
8 more intensive study was done after this report was
9 released.

10 Q. But I'm only talking about this just for this
11 report.

12 A. Did we look at something higher is the
13 question? My recollection is that we did not.

14 Q. What did you look at for this report?

15 A. From a loading rate perspective?

16 Q. Right.

17 A. My recollection is we did look at the 600,000
18 gallons per day and lower.

19 Q. What are you referring to as engineered
20 mitigation?

21 A. Engineered mitigation is described in other
22 parts of this report. And it would consist of
23 essentially two things. One is diversion of groundwater
24 to reduce hydraulic gradient. And armoring of slopes.

1 Those are the engineered mitigation. And they are in
2 other parts of this report.

3 Q. Which other parts of this report are they in?

4 A. It's the sentence after we were looking at.
5 More details are given in the report. But if you go to
6 the next sentence, the sentence also says, "What the
7 engineering mitigation means are by diverting your
8 intercepting groundwater up gradient of the RIBs or by
9 reinforcing the slopes by providing subsurface drainage
10 gradient up gradient of the seepage locations by
11 diverting the intercepting groundwater up gradient of
12 the RIBs or by a combination of these approaches."

13 So this bullet summarizes what the engineered
14 mitigation is. And there are more details. Do you want
15 me to find them?

16 Q. Yes. Let's identify them now and we can
17 return to them.

18 A. Page 25, the last paragraph starting with,
19 "Conceptually slope mitigation could involve the
20 following."

21 Q. So these were Haley & Aldrich's proposed
22 remedial measures, correct?

23 A. Correct.

24 Q. On page 25, the first one is, "Regrading the

1 slope surfaces affected by erosion and instabilities."

2 Please describe that work for me.

3 A. That work would consist of moving soil in the
4 areas that have been affected by some of the erosion
5 that is observed, the sink hole activity. So you're
6 going to move soil from higher locations into these
7 lower locations that have been impacted.

8 Q. The second, "Stabilizing the slopes," can you
9 describe that for me?

10 A. In this stabilization, surface armoring is
11 used along with potential for using a graded filter
12 beneath the surface armoring. And this serves, actually
13 it serves two purposes.

14 The first purpose is to mitigate any piping of
15 materials because you're putting a graded filter with
16 weight on top of it. So it's going to hold those soils
17 down in place.

18 And the second purpose that this serves is to
19 provide a higher factor of safety for your slopes by
20 putting weight on the resisting end of a slope stability
21 assessment. So it does two things.

22 Q. Did Haley & Aldrich calculate that if these
23 measures were taken, the site could dispose of 600,000
24 gpd without the slopes collapsing?

1 A. We did. We made an assessment for that
2 particular loading rate, which corresponds to a certain
3 groundwater level. And we concluded that it could be
4 repaired by these methods.

5 I'll qualify that in saying that additional
6 studies would need to be undertaken in that the analysis
7 would be considered preliminary.

8 Q. Did Haley & Aldrich for this report identify
9 where on the sites this stabilization of slopes would
10 have to be performed?

11 A. For this report, no.

12 Q. Say without identifying where the remediation
13 would take place, how were you able to say that the site
14 could dispose of 600,000 gpd?

15 A. The purpose of it wasn't to, the purpose of
16 our statement was one of feasibility as opposed to -- in
17 order to answer a question like you asked, you would
18 have to go and do a full design to say we are going to
19 treat the site in these particular areas, which you have
20 to identify in advance.

21 The purpose of this particular report was just
22 to look at the feasibility. And it would be considered
23 preliminary until maybe additional information could be
24 gathered about the site for geotechnical purposes.

1 Q. Is this mostly theoretical?

2 MR. CORKUM: Objection.

3 BY MS. CULL:

4 A. Define theoretical.

5 Q. Theoretical in that you haven't really
6 examined the site to figure out whether this would work,
7 but in theory these measures should work?

8 MR. CORKUM: Objection.

9 BY MS. CULL:

10 A. It's based on two things. One is theoretical
11 and the second is our experience with similar sites
12 where the mitigation measures we're presenting here and
13 presented in this report are very common stabilization
14 techniques for other slopes of similar characteristics.

15 Q. Let's work through the rest of these and we'll
16 return to that. The next bullet you have here in 25 is,
17 "Protecting the slope from surface erosion by seepage
18 channelization, vegetation or similar methods." What do
19 you mean by that?

20 A. There's two mechanisms of surface erosion.
21 One is from below. And that's soil bubbling up from
22 below. And that erodes the surface. The second one is
23 from precipitation, snow melt or rain. And at this
24 particular site, the second mechanism doesn't appear to

1 be applicable.

2 The idea would be to apply some surface
3 treatment to the soil to mitigate erosion of those
4 materials. It's a very common engineering practice.

5 Q. Let's deal with the last one. "Introduce
6 groundwater seepage to the down gradient areas through
7 levels," what's that?

8 A. Instead of having a very concentrated flow
9 which causes an erosion channel to form, the idea would
10 be by placing an engineered material, stone, and
11 combination of stone and geotech style, what you can
12 accomplish, you can accomplish a very narrow flow.

13 You can make the water go through a very
14 tortuous path, and that's the hydrogeologic term they
15 use, and have the load, for example, instead of over a
16 one foot area, it could be over a 50 foot area with the
17 same flow. So you can imagine that flow spreading over
18 a very large area.

19 Q. Would these spreaders go all the way down to
20 Nineteenmile Brook?

21 A. It would have to be engineered. I don't know.

22 Q. So are you able to say in this report where
23 you would put those spreaders?

24 A. No, we are not able to say that.

1 Q. When you say that it's feasible or actually
2 likely that it could be used at current rates and likely
3 higher rates, does that expert opinion take into account
4 permit requirements?

5 A. The second report, which is off the table,
6 took into account permit requirements.

7 Q. But did this report take it into account?

8 A. Other professionals prepared the bulk of this
9 report. I'm not certain at the present time whether we
10 addressed how many.

11 Q. Let's stick with bullet two and your statement
12 that anticipates that the RIB system could likely be
13 used at current loading rates and likely higher rates by
14 implementing engineered mitigation. Did this statement
15 take into account DES permitting requirements?

16 A. I'm not certain.

17 Q. When you drafted this section, had you looked
18 at the DES permit requirements?

19 A. I did not.

20 Q. Did you draft this section?

21 A. Not solely.

22 Q. Were you asked to give the Haley & Aldrich
23 opinion as to whether the site could likely be used at
24 current loading rates and likely be used at higher rates

1 by implementing the engineered solution?

2 A. Yes.

3 Q. Did you give an opinion on that?

4 A. Yes.

5 Q. Is that opinion in this report?

6 A. Yes.

7 Q. When you made that opinion, did you take into
8 account the DES permit requirements?

9 A. I was depending on other professionals for
10 that opinion.

11 Q. When you were giving this opinion, did you ask
12 someone whether this would be permitted by the DES?

13 A. I did not.

14 Q. What were you relying on when you were giving
15 this opinion?

16 A. I was relying on their opinion whether it
17 could be permitted.

18 Q. Did you ask them about that?

19 A. I did not ask them.

20 Q. Did you discuss permitting requirements with
21 anyone when you made this opinion that it could be
22 likely used at current loading rates and currently at
23 higher rates?

24 A. No.

1 Q. Is it true to say that this opinion is not
2 based on the DES permit requirements?

3 MR. CORKUM: Objection.

4 BY MS. CULL:

5 A. That was for other professionals at Haley &
6 Aldrich to review and not me.

7 Q. Do you know if they did?

8 A. I don't know.

9 Q. Did you ask anyone?

10 A. No.

11 Q. Do you understand, Mr. DiGenova, the Fuss &
12 O'Neil and Professor Benoit opinion that the site must
13 be abandoned takes into account the DES permit
14 requirements?

15 A. I don't recall.

16 Q. When you looked at the reports, did you notice
17 they cited DES permit requirements?

18 A. I don't recall.

19 Q. What's the basis for your statement here that
20 the Fuss & O'Neil conclusion is unsupported and
21 unreasonable?

22 A. Where are you reading from?

23 Q. The first line of bullet two?

24 A. You're saying what's the basis for that

1 statement?

2 Q. Yes.

3 A. The basis for that statement would be that in
4 order to make a statement that is unsupported and
5 unreasonable, an engineering firm would have to look
6 into what are potential remedial schemes that could be
7 undertaken to fix the site.

8 Q. Are you aware Fuss & O'Neil and subsequently
9 Professor Benoit have opined that they don't believe
10 that any potential remedial schemes will be permitted by
11 the DES?

12 MR. CORKUM: Objection.

13 BY MS. CULL:

14 A. I am not aware.

15 Q. So if someone said this site has to be
16 abandoned because the DES will not permit any fix, would
17 that be an unsupported opinion?

18 MR. CORKUM: Objection.

19 BY MS. CULL:

20 A. From what I know of what DES has stated to
21 make the site not permitable is that there's a point
22 source discharge at the site. I am not an expert in
23 dealing with permits or point source discharges.
24 However, I do know what they are.

1 And I do know that there are certain
2 engineering techniques that can be applied so point
3 source discharges are not, so you do not get a point
4 source discharge.

5 Q. But that was not the question. The question
6 was if someone's opinion is based on their
7 interpretation of a DES regulation, in your opinion is
8 their opinion unsupported?

9 MR. CORKUM: Objection.

10 BY MS. CULL:

11 A. I'm restating the question. Is their opinion
12 unsupported? No.

13 Q. And accepting that you may not agree with
14 their view, but if their opinion is based on their
15 interpretation of the DES regulations, is that per se an
16 unreasonable opinion?

17 A. In our opinion, it is unreasonable if they
18 have not investigated alternatives.

19 Q. Do you know whether they investigated
20 alternatives?

21 A. I am uncertain. It was for other
22 professionals at Haley & Aldrich to conclude.

23 Q. Let's take a look at the third letter. You
24 say here, "If the geotechnical analysis of the potential

1 effects of slope seepage had been conducted during the
2 design process, a geotechnical engineer would have
3 likely concluded there was potential for erosion and
4 slope instability."

5 Mr. DiGenova, if slope stability analysis had
6 been performed by Wright-Pierce in 2007, would it have
7 been obvious that there was going to be slope
8 instability with flow rates of 600,000 gpd?

9 A. You mean Wright-Pierce or their subcontracted
10 qualified geotechnical engineering firm?

11 Q. Correct.

12 A. I would say most likely.

13 Q. Would they have concluded there was going to
14 be slope instability at flow rates any higher than
15 400,000 gpd?

16 A. Most likely.

17 Q. Let's move on. It says, "However, in Haley &
18 Aldrich's opinion, this would not have been a requisite
19 reason to abandon the site for the following reasons."

20 Mr. DiGenova, have you discussed this project
21 with anyone from the town?

22 A. I have not.

23 Q. Do you know whether the town would have gone
24 ahead with the purchase of the Wolf 1A site if it had

1 known that this site could only dispose of between 300
2 and 400,000 gpd?

3 MR. CORKUM: Objection.

4 BY MS. CULL:

5 A. I have no idea.

6 Q. Have you discussed with Wright-Pierce whether
7 they had any plan for armoring the subsurface at the
8 site prior to the operation of the RIBs?

9 MR. CORKUM: Objection.

10 BY MS. CULL:

11 A. No.

12 Q. Have you seen anywhere in the documents you've
13 been shown in this case that Wright-Pierce as part of
14 its design planned to perform any slope stability work
15 on the site prior to the operation of the RIBs?

16 A. Not that I'm aware of, no.

17 Q. Have you seen anything from Wright-Pierce
18 where they planned to monitor the site after the
19 operation of the RIBs?

20 A. No.

21 Q. Let's turn to page 15. It was indicated
22 yesterday by Mr. Kastrinos that you were the gentleman
23 to opine on the third sentence of 4.2 in the bold.
24 "Based on on-going damage currently occurring to the

1 facility at a loading rate of only 275,000 gpd, the site
2 cannot even sustain a 275,000 gpd loading rate."

3 This is a statement that has been extracted
4 from the Fuss & O'Neil report. What is the basis of
5 that statement?

6 MR. CORKUM: The basis of the Fuss &
7 O'Neil statement?

8 MS. CULL: The basis of Haley & Aldrich's
9 objection to that.

10 MR. CORKUM: The basis for the next
11 paragraph?

12 MS. CULL: Only in respect of that
13 sentence.

14 BY MS. CULL:

15 A. Where does the sentence start? Oh, okay.

16 Q. What is the basis of Haley & Aldrich's
17 objection to that statement?

18 A. The basis for an objection to that statement
19 would be two things, preliminary engineering assessment
20 and our experience with water levels and remediation in
21 other similar slopes.

22 Q. That preliminary engineering, for this report
23 is that the engineering that you pointed out on page 25?

24 A. Yes.

1 Q. When you were preparing that engineering, did
2 you take into account the requirements of the DES
3 regulations and Clean Water Act?

4 A. I left the DES regulation aspects to other
5 professionals in our organization.

6 Q. Did you discuss those requirements with them
7 when you opined that the site can take a higher flow
8 rate?

9 A. I did not.

10 Q. So did you make that statement without taking
11 into account the DES regulations and the Clean Water Act
12 requirements?

13 A. Are you asking I personally or Haley &
14 Aldrich?

15 Q. You've testified that you personally did that
16 and you did not speak to anybody else about the
17 requirements of the DES regulations or the Clean Water
18 Act.

19 So unless you can tell me that someone else
20 looked at that and said it complied with the DES
21 requirements and you wrote that and you didn't speak to
22 them, I'm asking when you made that opinion, gave that
23 expert opinion, did you take into account the NHDES
24 requirements or the requirements of the Clean Water Act?

1 A. No.

2 Q. Let's move down to 4.3. It says here,
3 "Wright-Pierce failed to recognize potential slope
4 stability and seepage issues during the site selection
5 phase." Do you agree with that statement?

6 MR. CORKUM: Objection.

7 BY MS. CULL:

8 A. Well, it's Fuss & O'Neil's conclusion No. 3,
9 if that's what you're asking. That's accurate. It's
10 Fuss & O'Neil's -- do I agree they failed to recognize
11 -- yes, I agree.

12 Q. Do you agree that Wright-Pierce failed to
13 perform a thorough geotechnical analysis of the selected
14 site?

15 A. Yes.

16 Q. Let's turn to page 20, please. I have been
17 told that you are testifying as to conclusion six?

18 A. Yes, that is true.

19 Q. I believe that you are not opining on the
20 standard of care statement there in the second line. Is
21 that true?

22 A. That is true.

23 Q. Mr. DiGenova, in the second paragraph, it
24 says, "Had the town accepted Wright-Pierce's

1 recommendation to engage S.W. Cole immediately after
2 observing evidence of instability, then the unstable
3 slopes may have been remedied in a timely manner."

4 Who told you that the town did not accept
5 Wright-Pierce's recommendation to engage S.W. Cole?

6 A. As I understand what happened, there was a two
7 year delay between the time Wright-Pierce suggested
8 doing a geotechnical investigation and to the time when
9 it actually was done. As I understand, there was a
10 delay.

11 Q. Do you know why there was a delay?

12 A. I do not know.

13 Q. Did you ask anyone why there was a delay?

14 A. No.

15 Q. Do you know whether the DES would have
16 permitted any remediation of the slope?

17 A. I do not know.

18 Q. Fuss & O'Neil have opined that the site is a
19 total loss, correct?

20 A. Yes.

21 Q. And Professor Benoit has opined that the site
22 is a total loss, correct?

23 A. Yes.

24 MR. CORKUM: Objection.

1 BY MS. CULL:

2 Q. What's the basis for the statement that the
3 majority of such costs would have been part of the
4 town's original construction expenditure if slope
5 mitigation had been built into the original design?

6 A. What's the basis for that statement?

7 Q. Yes.

8 A. If an appropriate geotechnical investigation
9 had been done at the time of siting, stabilization and
10 other control measures could have been implemented on
11 the slope at that time.

12 Q. Would that have increased the cost of the
13 project?

14 MR. CORKUM: I think you cut him off.

15 BY MS. CULL:

16 A. And we wouldn't have seen the damage to the
17 site that we see today.

18 Q. And would that have increased the original
19 cost to the project?

20 A. Almost certainly.

21 Q. Do you know whether the town would have gone
22 ahead with the project if the project costs had
23 increased?

24 A. I do not, no.

1 Q. Did Wright-Pierce tell the town that these
2 additional slope stabilization measures were necessary?

3 A. I do not know.

4 Q. Have you seen any evidence that they told the
5 town it would be necessary?

6 A. I have not seen any evidence of that.

7 Q. Have you read the phase three report?

8 A. Can I see it?

9 Q. Exhibit 14.

10 A. No, I have not.

11 Q. So you don't know what representations
12 Wright-Pierce made to the town regarding the capacity of
13 the site?

14 A. I do not. That was left for other
15 professionals in the organization.

16 (Brief recess.)

17 BY MS. CULL:

18 Q. Let's turn to page 22, please. On page 22,
19 section five of the Haley & Aldrich report?

20 A. Okay.

21 Q. You say in the first paragraph, "Wright-Pierce
22 had recommended to the town that a geotechnical study be
23 conducted." Who told you that?

24 A. That was written by others.

1 Q. Do you know anything first hand about what
2 Wright-Pierce may have recommended to the town or what
3 the town may have said to Wright-Pierce in respect to
4 the S.W. Cole's geotechnical analysis?

5 A. I do not.

6 Q. Are you able to testify at all about this
7 first paragraph?

8 A. No.

9 Q. Who would testify to that?

10 A. Mr. Kastrinos.

11 MS. CULL: At the moment, I think it's
12 unlikely I would bring Mr. Kastrinos in for this but
13 we'll reserve our position.

14 MR. CORKUM: I understand.

15 BY MS. CULL:

16 Q. Toward the bottom of that page, you refer to
17 the town commencing operation at an average loading
18 rate. Are you able to testify to that or was that
19 information provided to you by others?

20 A. By others.

21 Q. Is that Mr. Kastrinos as well?

22 A. Mr. Kastrinos.

23 MS. CULL: Same reservation.

24 BY MS. CULL:

1 Q. Continuing on to the top of page 23 there, it
2 continues to talk about loading rates and overloading.
3 Is that also Mr. Kastrinos?

4 A. Yes.

5 Q. Starting on the paragraph Field Data, is that
6 something you are able to testify to?

7 A. I can speak to hydraulic gradients as they
8 apply to soil piping. I can speak to that portion of
9 the paragraph. References to S.W. Cole in the 2008
10 letter I cannot say. I do not know.

11 Q. That first sentence there, would that be Mr.
12 Kastrinos as well?

13 A. Yes.

14 Q. Did you do the estimate of the hydraulic
15 gradient between the RIBs and the central wetland area?

16 A. The work was done -- I did review that
17 information, but that was done by Chris Jones.

18 Q. At your command as it were?

19 A. Yes.

20 Q. Can you tell me what Haley & Aldrich found
21 there?

22 A. I can briefly summarize it. Haley & Aldrich
23 had calculated hydraulic gradients exiting the slope
24 under different RIB loading rates. And we compared that

1 to a static condition, a non-RIB loading condition or a
2 preconstruction condition, which should be similar, not
3 exactly the same but similar.

4 And we concluded that under this higher water
5 table condition at the loading rates indicated in the
6 report, we had 20 percent or higher hydraulic gradients
7 in the soils.

8 Q. And what was the cause of that?

9 A. The increased hydraulic gradients was caused
10 by an increase in groundwater level.

11 Q. And was it impacted by how much was discharged
12 to the RIBs?

13 A. Yes.

14 Q. The last sentence on the page, "Regardless of
15 the specific causes, the net effect of an increased
16 hydraulic gradient during high water table conditions is
17 increased seepage rates which can exacerbate soil piping
18 such as occurred at the site." Can you simplify that
19 for me?

20 A. What it says is that under higher water tables
21 leads to increased hydraulic gradients which can lead to
22 soil piping at the project site. There's a cause and
23 effect.

24 Q. That high water table, what are the causes of

1 of that, what causes a higher water table?

2 A. The introduction of surface water.

3 Q. Okay.

4 A. Whether it be from precipitation or RIB
5 loading.

6 Q. Did Haley & Aldrich study what rates of flow
7 would cause the soil piping?

8 A. Yes.

9 Q. What is the lowest rate of flow that would
10 cause soil piping?

11 A. That is not known.

12 Q. What did you study?

13 A. Based on the rates of flow -- this goes back
14 to now, just to clarify, our second report.

15 Q. I'm only --

16 A. You're only interested from this report?

17 Q. Yes.

18 A. Because we did study those. I think the
19 feeling was that elevated water tables, higher rates of
20 flow, led to increased soil piping. And I don't think
21 we ever put a number to exactly what flow would cause
22 the piping, specifically the piping.

23 Q. Can that be done?

24 A. Yes.

1 Q. You said you studied the conditions at the
2 site preoperation of the site?

3 A. Yes.

4 Q. So it is theoretically possible to look at the
5 original condition of the site and figure out what level
6 of flow would stop the soil piping?

7 A. Theoretically, yes.

8 Q. When you were performing these analyses, were
9 you using the model?

10 A. Other professionals were, yes.

11 Q. So Haley & Aldrich was?

12 A. Yes.

13 Q. And what model were you using?

14 A. I don't know specifically off the top of my
15 head, but it should be presented in the report.

16 Q. Was it a model that Haley & Aldrich had built
17 from scratch or was it based on the Wright-Pierce model?

18 A. I don't know. Are you talking about a model
19 or modeling at the subsurface, are you talking about a
20 piece of software or the actual model of the site? Can
21 I get clarification on that?

22 Q. I would like to know whatever you used,
23 whether you used both or whether you only used the
24 software. What did you use to --

1 A. As I understand, we used a program called Seep
2 W. That's just my understanding. I don't use it myself
3 as a geotechnical engineer. It's a hydrogeologic
4 program.

5 Q. But you yourself did a slope stability
6 analysis of the site, correct?

7 A. Can you repeat that?

8 Q. Did you yourself do the slope stability
9 analysis?

10 A. I had a junior engineer --

11 Q. Under your supervision?

12 A. Yes.

13 Q. Turn now to page 24. There are comments here
14 about the town's alleged failure not to follow
15 Wright-Pierce's recommendations. Is this something
16 you're going to testify to?

17 A. Is it the paragraph starting with, "If the
18 town had followed?"

19 Q. No, right at the top of the page. "The town
20 did not follow," all the way down to, "regarding."

21 A. No.

22 Q. Who would that be?

23 A. That would be John Kastrinos. I could speak
24 of the last sentence in the paragraph that starts, "If

1 the town had followed Wright-Pierce's recommendation."

2 Q. "As noted above, such observational methods
3 are not uncommon," that one?

4 A. Correct. If you're interested in that, I can
5 talk to that.

6 MS. CULL: I'll reserve my right to call
7 back Mr. Kastrinos.

8 BY MS. CULL:

9 Q. With regard to that sentence, "As noted above,
10 such observational methods are not uncommon in
11 geotechnical engineering and they can be an effective
12 way of implementing a design without unnecessary cost,"
13 do you know whether, and again tell me whether this is
14 Mr. Kastrinos, have you seen anything from Wright-Pierce
15 where they told the town to incrementally start up the
16 RIBs?

17 A. That would be a question for John Kastrinos.
18 I am not aware of any.

19 Q. It says here, "Such an approach during active
20 loading at the RIBs should have comprised groundwater
21 level monitoring, monitoring of the slopes and
22 addressing seepage issues if and when they led to an
23 erosion at the slope." Are you speaking to that?

24 A. Where are you?

1 Q. Right above.

2 A. I could speak to that to some extent.

3 Q. Do you know whether Wright-Pierce was
4 monitoring the site following the operation of the RIBs?

5 A. The only monitoring that I'm aware of is the
6 monitoring of the groundwater levels as the RIBs were
7 loaded.

8 Q. Who was doing that?

9 A. I believe that was Wright-Pierce.

10 Q. Did that monitoring indicate to Wright-Pierce
11 that there was a problem with the site prior to the
12 collapse of part of the site in April '09?

13 A. I do not know.

14 Q. Do you know if Wright-Pierce was doing any
15 other monitoring of the site following the start-up of
16 the RIBs?

17 A. Not that I'm aware of.

18 Q. Do you know whether Wright-Pierce had told the
19 town to monitor the site following the operation of the
20 RIBs?

21 A. I do not know.

22 Q. Would it have been prudent to have monitored
23 the site following the operations of the RIBs?

24 MR. CORKUM: Objection.

1 BY MS. CULL:

2 A. You stated would it be prudent, but as far as
3 I know, they were monitoring the groundwater levels in
4 the slopes. So they were monitoring, so they were doing
5 something prudent.

6 Q. I'm reading, "They were comprising groundwater
7 monitoring, monitoring the slopes and addressing seepage
8 issues." Was Wright-Pierce monitoring the site or
9 addressing seepage issues?

10 A. I don't know.

11 Q. Would a prudent engineer have been monitoring
12 the slopes and addressing seepage issues?

13 MR. CORKUM: Objection.

14 BY MS. CULL:

15 A. If you said it was a prudent geotechnical
16 engineer, I would say yes, that would be the prudent
17 thing to do. I'm not sure if Wright-Pierce did that or
18 not. I just don't have enough information to know that
19 information.

20 Q. But a prudent geotechnical engineer would have
21 done that?

22 A. Yes.

23 Q. And Wright-Pierce was the engineer of record
24 for this site, correct?

1 A. Correct.

2 Q. And the town had hired Wright-Pierce to
3 identify and design this site, correct?

4 A. As far as I know.

5 Q. So are you saying that Wright-Pierce did not
6 need to do everything that a prudent geotechnical
7 engineer did because in your opinion Wright-Pierce isn't
8 a geotechnical engineer?

9 A. Could you rephrase that?

10 Q. Sure. The town hired one engineer for this
11 site, correct?

12 A. As far as I know.

13 Q. So are you trying to say that even though you
14 would say a prudent geotechnical engineer should have
15 performed the monitoring of the slopes and addressing of
16 the seepage, you don't believe that Wright-Pierce was
17 required to have done that?

18 A. I cannot speak for a wastewater engineer. I
19 can only speak for a geotechnical engineer. I can't
20 speak for them.

21 Q. But you've provided an expert opinion on their
22 behalf, correct?

23 A. Yes, I am. I'm a geotechnical engineering.

24 Q. Are you commenting on whether they met the

1 standard of care for a prudent engineer who had been
2 hired to identify the capacity and design this RIB
3 system?

4 MR. CORKUM: Objection.

5 BY MS. CULL:

6 A. I cannot speak to the field of wastewater
7 engineering. I can only speak for my own.

8 MS. CULL: No further questions. I
9 reserve my right to recall Mr. Kastrinos on issues Mr.
10 DiGenova could not testify to.

11 (Whereupon the deposition was concluded at
12 12:04 p.m.)

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C E R T I F I C A T E

I, JOHN DIGENOVA, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony.

Dated at _____ this _____ day of _____, 2013.

JOHN DIGENOVA

Signed under the pains and penalties of perjury.

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

I, Patricia M. Haynes, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That JOHN DIGENOVA, the witness whose testimony is hereinbefore set forth, was duly sworn by me and that such testimony is a true and accurate record of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this day of November 2013.

Patricia M. Haynes, CSR
Notary Public

My commission expires June 30, 2017

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ERRATA SHEET

Please indicate the page number and line number along with the correction.

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JOHN DIGENOVA

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COPLEY COURT REPORTING
The Mercantile Building
71 Commercial Street #700
Boston, Massachusetts 02109
617-423-5841

DATE: November 26, 2013
TO: Donovan & Hatem, LLP
ATT: David H. Corkum, Esquire
53 State Street
Boston, Massachusetts 02109
IN RE: Wolfeboro VS Wright-Pierce

Dear Mr. Corkum,

Enclosed herewith is your copy of the transcript of the deposition of JOHN DIGENOVA, taken on Friday, November 15, 2013, in the above-mentioned case.

In compliance with stipulations, the witness will read the transcript and sign the signature page and errata sheet and return them as soon as possible to the respective attorneys involved. Any changes or corrections are to be made separately on the enclosed errata sheets signed by the witness.

If the witness has not read and signed the transcript and returned it to the parties involved within thirty days, the transcript will go in as testified to under oath.

Thank you for your anticipated cooperation. If you have any questions, please feel free to call on me.

Very truly yours,

Patricia M. Haynes

CC: Rhian R.J. Cull, Esquire

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