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**Joseph V. Polsinello, Principal / LSP**  
**Inland Professional Corporation**

Downtown Boston Real Estate Affinity Via Zoom – Denise A. Chicoine, Esquire – Leader  
Lisa J. Delaney, Esquire and Joseph V. Polsinello Licensed Site Professional (LSP)  
Presentation – Environmental – Legal - Business Due Diligence

Introduction – Case History Scenario

Lisa J. Delaney, Esquire

Points of Interest – Insight – Contingency

Joseph V. Polsinello, IPC

Description / Basis of Handout – Exhibits Self Explanatory for Later Research

- Mass DEP Reporting Required Release of Oil / Hazardous Materials – Misconceptions NO Need To Report – Only Imminent Threat
- Recognized Environmental Condition VS. Reportable Condition
- P & S Restrictive Language Buyers Consultant NO DRAFTS Allowed Owner Owns Responsibility Legal / Compliance
- Sub Surface Phase II P & S Language
- Polsinello Fuels = Joe's Roots – Origin of Inland Pollution / Professional IPC
- Polsinello Owned Truck Stop – Case History Sale to Third Party
- One ( 1" ) Inch Versus Two ( 2" ) Inch Groundwater Wells Non Standard Versus MA DEP Standard Groundwater Monitoring Wells
- IPC / Polsinello Photo Examples Install Wells – Sample – Package – Preservation Documentation – DEP CAM (Compendium of Analytic Methods) – QA/QC – Data Useability – Chain of Custody – Temporal / Spatial – Fate & Transport – Scientifically Valid & Defensible – Level of Precision & Accuracy Commensurate Stated – Intended Use – Sampling Collection & Analyses Qualified By Education Training & Experience



## IPC Explanation of Reporting Requirements to MA DEP

IPC / Polsinello will provide data and analysis with our understanding of the basis of site conditions encountered, field observations and testing; and/or laboratory results of any soils and groundwater analyzed. The owner may or may not have reporting responsibilities. Reportable concentrations in soils, given the small quantity / small volume of representative soil, packaged, delivered and analyzed at the laboratory, may or may not be representative of a reportable condition, or representative of the MCP two (2) cubic yard contiguous volume of petroleum contaminated soil. Soils may contain constituents that may or may not be exempt from the MCP reportable conditions; and or contain naturally occurring elements. In the event elevated constituents are reported, the owner may consider additional and/or confirmatory assessment. In some instances migration from other adjacent off source contaminants in soils and groundwater may require further assessment and understanding of conditions. Specific portions / sections of the MCP (Massachusetts Contingency Plan) 310 CMR 40.0000 are applicable to notification to the DEP.

### 40.0330: Notification Requirements and Procedures

#### 40.0331: Who Shall Notify

(2) If a release to the environment has occurred or a threat of release to the environment exists at any site or vessel and there is a substantial likelihood that such release or threat of release includes or would include oil and/or hazardous material which appears at 310 CMR 40.1600 or exhibits any of the characteristics described in 310 CMR 40.0347, **then any owner, operator, or fiduciary or secured lender who holds title to or possession of such site or vessel, shall determine whether such is the case, and whether any such release or threat of release requires notification to the Department under 310 CMR 40.0300.**

#### 40.0320: Releases and Threats of Release that Pose Imminent Hazards

#### 40.0321: Reporting of Releases and Threats of Release that Pose or Could Pose an Imminent Hazard

#### 40.0315: Releases Which Require Notification Within 120 Days

Except as provided in 310 CMR 40.0317 or 40.0318, persons required to notify under 310 CMR 40.0331 shall notify the Department not more than 120 days after obtaining knowledge that a release meets one or more of the following sets of criteria:

- (1) a release to the environment indicated by the measurement of one or more hazardous materials in soil or groundwater in an amount equal to or greater than the applicable Reportable Concentration described in 310 CMR 40.0360 through 40.0369 and listed at 40.1600;
- (2) a release to the environment indicated by the measurement of oil and/or waste oil in soil in an amount equal to or greater than the applicable Reportable Concentration described in 310 CMR 40.0360 through 40.0369 and listed at 40.1600, where the total contiguous volume of the oil and/or waste oil contaminated soil is equal to or greater than two cubic yards;



- (3) a release to the environment indicated by the measurement of oil in groundwater in an amount equal to or greater than the applicable Reportable Concentration described in 310 CMR 40.0360 through 40.0369 and listed at 40.01600; or
- (4) a release to the environment indicated by the presence of a subsurface Non-Aqueous Phase Liquid (NAPL) having a measured thickness equal to or greater than ~~20~~ inch and less than  inch.

40.0318: Limited Removal Actions

- (1) Limited Removal Actions may be undertaken by RPs, PRPs or Other Persons prior to notification to the Department of those "120 Day Notification" releases described in 310 CMR 40.0315.
  - (4) Limited Removal Actions shall be restricted to the excavation and off-site recycling, reuse, treatment, and/or disposal of not more than the following cumulative volumes of soil removed from a disposal site with measured concentrations of oil or hazardous material equal to or greater than an applicable Reportable Concentration:
    - (a) not more than 100 cubic yards of soil contaminated solely by a release of oil or waste oil; and
    - (b) not more than 20 cubic yards of soil contaminated by a release of hazardous material or a mixture of oil or waste oil and hazardous material.
- (8) Limited Removal Actions conducted in compliance with the provisions of 310 CMR 40.0318 shall not require oversight by a Licensed Site Professional, except for Limited Removal Actions that involve the use of the Bill of Lading soil management process described in 310 CMR 40.0030.



Clean

Contaminated



- Data Usability

- Imminent threat condition
- Substantial Release migration
- Indoor vapor intrusion

A property is being;  
Bought, Sold, Leased, or Financed...

What does the ASTM Standard determine of a Recognized Environmental Condition (REC)?

What is *Substantial Likelihood* and what difference can it make as regulated under MGL Chapter 21E?

Who is responsible for reporting or not reporting the property to the DEP?



**INLAND PROFESSIONAL CORPORATION**  
Environmental, Construction  
& Business Management

**Joseph V. Polsinello**  
Principal, Licensed Site Professional  
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Suggested Language for Use by Seller's P & S Agreement Environmental Due Diligence, Subject to the Attorney Review: NOTE: Amend for a buyer who remains protective as there is no restriction to a buyer doing due diligence. Writing a report even a DRAFT is in no one's interest until acceptable as a buyer also has to live with the basis.

The Seller is providing a recently completed ASTM International E1527-13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process / U.S. AAI (All Appropriate Inquiry) as performed by a Qualified Environmental Professional (QEP) / Massachusetts Licensed Site Professional (LSP) individual / qualified company. The Phase I Environmental Site Assessment (ESA) is conducted and based on the foreseeable use of the Subject Property as commercial business, non-residential, non-institutional, non-agricultural, non-sensitive population use.

Upon a determination to purchase and close on the Subject Property, the EQP / LSP will provide certification, a reliance letter authorizing use of the report with the same limitations; with an insurance certificate to the Buyer at closing. The Seller as the Buyer may request, will schedule the Sellers QEP / LSP to cooperate and meet with the prospective Buyer at the Subject Property. Prior to Closing, the Buyer under a strict confidentiality agreement with non disclosure to third parties, may review the report, and communicate directly with the QEP / LSP who will cooperate with the Prospective Buyer as to the content of the report.

In the event the Buyer engages or uses a third party consultant / QEP / LSP as they may during their due diligence process, that individual / entity shall be bound by the same strict confidentiality agreement as the Buyer. Additionally, that individual and entity shall be identified to the Seller prior to disseminating the Sellers report and allowing access to the Subject Property. The Prospective Buyer shall not draft or create any documents relative to environmental assessment reports without the express written authorization of the Seller. The Buyer and/or his third party due diligence consultants / LSP's shall not contact, provide notifications to any local, specific state or federal agency to include the Massachusetts Department of Environmental Protection (MA DEP).

In the event a Buyer does not require a lending institution financing for an outright purchase IPC / Polsinello as may be representing a seller / owner will prepare a report conditional / covenant items of interest to document and eliminate recourse through special qualified legal representation as coordinated with the seller / owner general lead counsel.

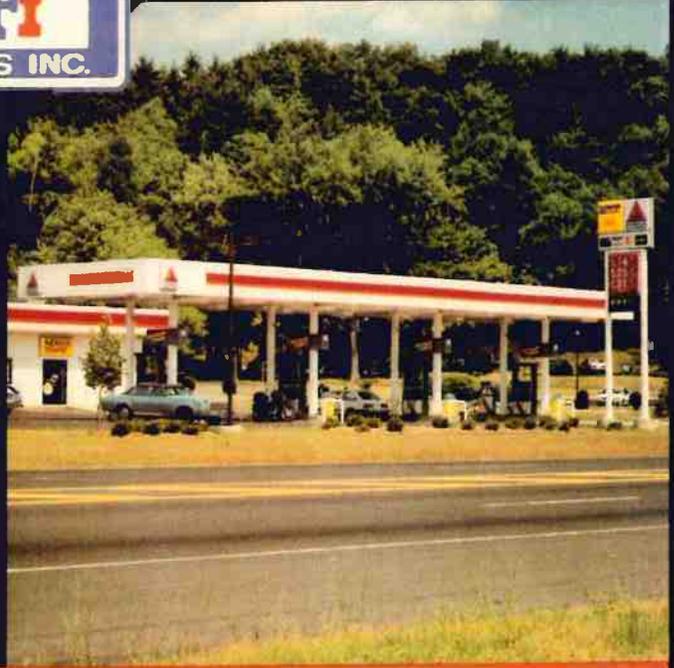
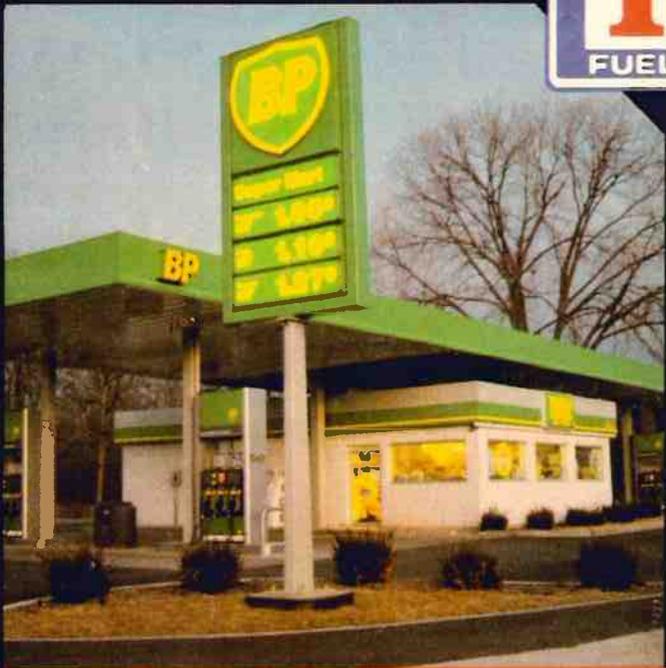
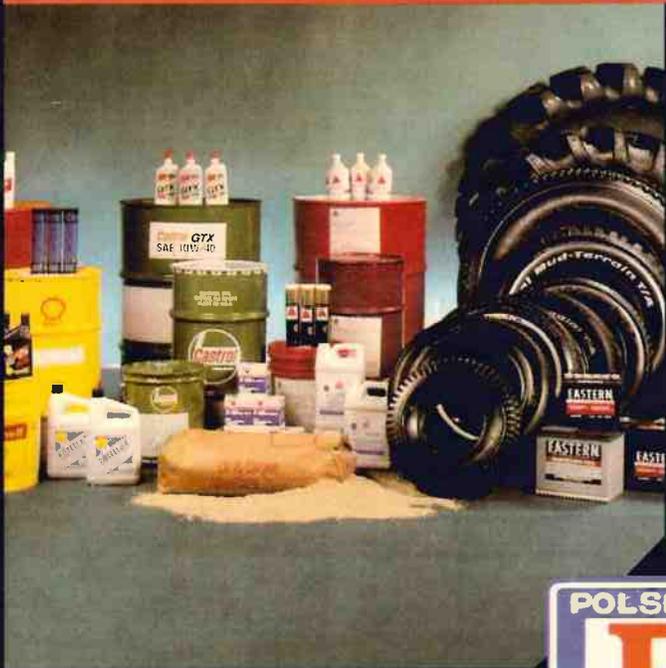
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- A. Based on the nature and extent of the Subject Property's history, conduct approximately six **(6) soil borings / Split Spoon Sampling** in selected areas of the exterior areas of the Subject Property to assess the quality of the soils by field testing, PID (photo ionization detector), visual, olfactory methods; and to **install three (3) separate MA DEP industry standard two (2") inch groundwater monitoring wells MW** for groundwater analysis. 4.25" borings with silicon sand and bentonite seal, at least 10 feet of screen into the historic aquifer vadose zone. Strategic locations shall be selected on the exterior of the Subject Property by scientific and engineering principles to obtain qualified opinion of the groundwater sub surface conditions as a priority. The basis of location and installation will be identified and performed by qualified hydrogeologist / LSP / Civil Engineer. **Note:** The Subject Property provides limited area, presumably as refenced on aerial mark up, at the Subject Property frontage corners and centers. The groundwater monitoring wells will be MA DEP Environmental Industry Specified two (2) inch diameter and would exist at a depth of approximately ten (10) feet of screen below the identified approximate average groundwater table. Upon a determination of suspect soils obtained during the borings / split spoon sampling method may perform laboratory analysis for those discrete selected suspect samples
- B. Subsequently, following industry standard, return at a minimum of seven (7) days from the installation of the wells to survey elevations, develop, purge and collect representative groundwater samples from the 2" diameter GW MW's. Following the groundwater collection, IPC would preserve, package, and deliver the groundwater samples to a Massachusetts certified laboratory per chain of custody record for the analysis of constituents that include extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), polychlorinated biphenyl (PCB), 13 Resource Conservation and Recovery Act (RCRA) Metals, volatile organic compounds (VOC), and hexavalent chromium. Limited soil samples shall be sent to a certified laboratory with the exception of additional suspect soils exhibiting PID readings (organic vapor), visual or olfactory evidence as described in Item
- C. Only Experienced Qualified Engineering and MA DEP Licensed Site Professionals Shall Actually Conduct the on-site work. No junior, entry level or individuals with less than 10 years relevant professional experience that lead the on site work. Only certified and licensed drilling contractors experienced in conducting environmental investigations shall conduct the work. No one (1") diameter shallow NON DEP Standard 2" assessment wells shall be considered.

# Polsinello Fuels, Inc.

41 Riverside Avenue, Rensselaer, NY 12144



**"Over 40 Years in Business"**

**HOTLINE: MON. - FRI. 8 AM - 5 PM: (518) 463-7812**  
**24 HOUR EMERGENCY: (518)463-0084 or (518)465-3535**  
**TOLL FREE 1-800-334-LUBE**



NYDEC SPILL ID #: 20-05645  
 PBS #: 4-135151  
 VESTA PROPERTIES, INC.  
 12816 RTE. 22, CANAAN, NY 12029  
 IPC PROJECT # 1932 H

**FIGURE 1:**  
 IPC SITE PLAN  
 AERIAL PHOTOGRAPH  
 DATE OF PLAN: NOVEMBER 2, 2020



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 HANOVER, MA  
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**FIGURE 2:**  
 IPC SITE PLAN  
 BORING LOCATIONS  
 DATE OF PLAN: NOVEMBER 2, 2020



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1"

2"



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## Photographic Information

9.) View Northeast – GeoProbe Soil Coring Sampling to Approximately 20 Feet Below Asphalt Grade – Jennilee Cannucci, Geoscientist, IPC – Screen, PID and Visual Characterize and Document Soils.



10.) View Northeast – Soil Coring to Approximately 20 Feet – Photo Depicts Soil Sample Boring and Groundwater Sampling Southwest and Downgradient of the Diesel Tank Area.



## *Photographic Information*

**11.) View North – Typical Soil Coring Sleeves – Inventoried & Documented for Assessment by PID, Visual and Olfactory Methods.**



**12.) Soil Coring Sleeved Sliced Open - Inventoried & Documented for Assessment by PID, Visual and Olfactory Methods.**



## Photographic Information

13.) View Northeast – Typical Soil Boring to Approximately 20 Feet.



14.) View Additional Soil Boring Core Samples – Provided Diverse Gravel & Sand Immediate Sub Surface, Clay and Silt Soils, Rock and Some Shale.



## Photographic Documentation

3.) Mark Hovis, Civil Engineer / Environmental Professional – Inventory, Characterization, Logging Screening, Field Assessment PID Headspace.



4.) IPC MW – 1, Install Completed 2" Diameter MA DEP Industry Standard Monitoring Well – Set to 28.6 Feet Depth to Bottom. GW 8.6 Feet.



## ***Appendix B – Photographic Information***

**7.) September 24, 2019:** Typical MA DEP Industry Standard Groundwater Monitoring Well Two (2") Inch Diameter Note: Screened Section of Two (2) Inch PVC Material to Construct Well.

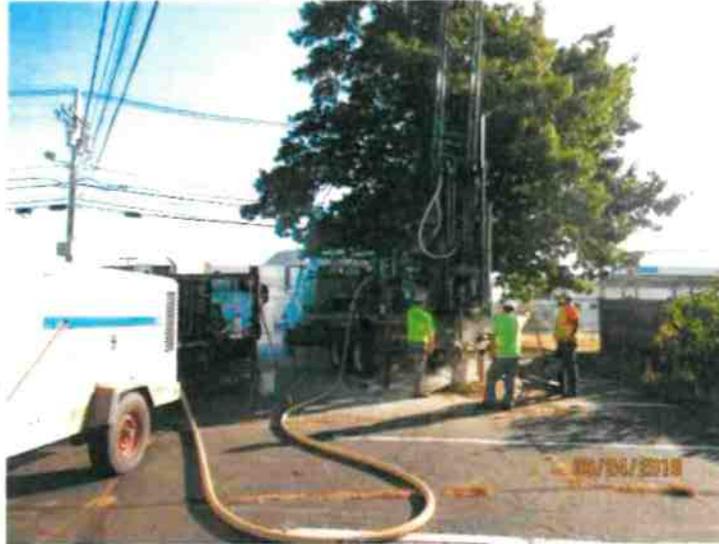


**8.) October 2, 2019:** Jennilee Cannucci, Geoscientist / Project Management, IPC conducting initial elevation survey, phase layer assessment, confirmation of GW MW measurement, IPC MW # 3.



## ***Appendix B – Photographic Information***

1.) **September 24, 2019:** IPC Sub Surface Investigation at the [redacted] MA. Note: Conducted soil boring (1) into bedrock with air Truck Mounted Drill, Air Compressor, and 4" Air Hammer (Bedrock encountered approximately four (4) below grade); completed as IPCMW-1, installed at the northeast corner / driveway entrance at the [redacted] Ave. frontage.



2.) **September 24, 2019:** IPCMW-1, located at the northeast corner driveway/ entrance at [redacted] Ave. frontage. Note: Installation of IPC MW # 1 completed by IPC / Polsinello / Cannucci.



## ***Appendix B – Photographic Information***

**9.) October 2, 2019:** Jennilee Cannucci, Geoscientist / Project Management, IPC conducting initial elevation survey, phase layer assessment, confirmation of GW MW measurement, PID Headspace Screening, IPC MW # 1; PID Headspace Screening.



**10.) October 2, 2019:** Joseph Polsinello, LSP, IPC conducting initial elevation survey, phase layer assessment, confirmation of GW MW measurement, PID Headspace Screening, existing circa 1978, four (4") inch GW MW. Note: Well Located in the Central Area of the Asphalt Paved Parking Area.



## Photographic Documentation

11.) Joseph Polsinello, IPC LSP Sampling Existing Monitoring Well MW-5

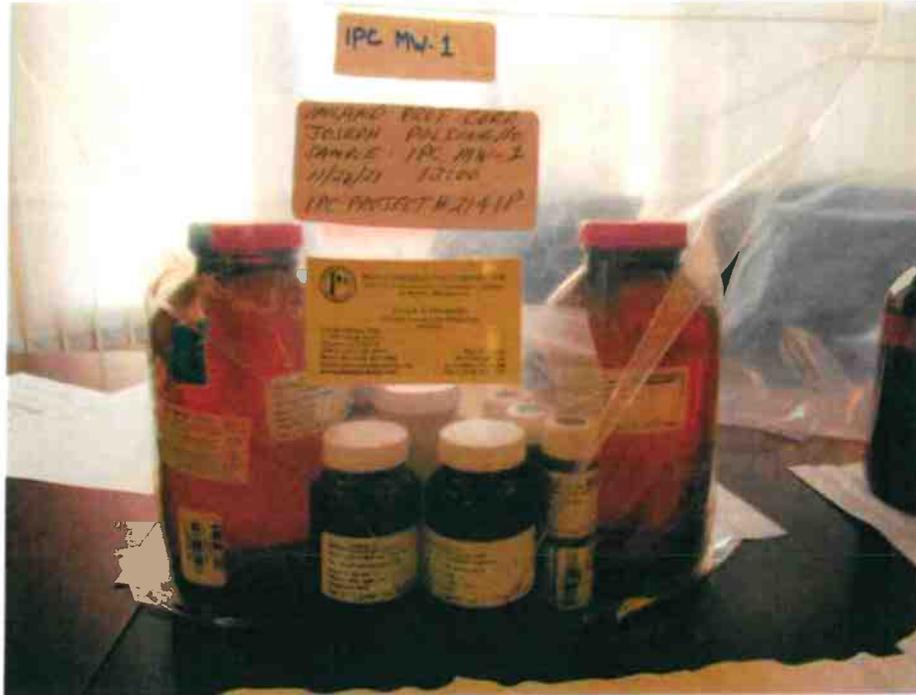


12.) View Northwest – IPC MW -3 1409 Well Development & Sampling



## Photographic Documentation

15) Groundwater Samples Preserved Packaged Delivered to Alpha Analytical Per Cahin of Custody Record by Joseph Polsinello, LSP / IPC.



16) Samples Preserved and Packaged Alpha Analytical Dedicated Cooler, Sealed with Chain of Custody Record.

