

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
BOARD OF REGISTRATION OF
HAZARDOUS WASTE SITE CLEANUP PROFESSIONALS

In the Matter of:)

James J. Decoulos,)
Respondent)

Docket No.: LSP-10AP-01

**AFFIDAVIT OF JAMES J. DECOULOS IN SUPPORT
OF RESPONDENT'S MOTION TO SEEK ORAL TESTIMONY
FROM MILLIE GARCIA-SURETTE (aka MILLIE GARCIA-SERRANO)**

My name is James J. Decoulos and the following facts are true to the best of my knowledge, information and belief.

1. Complaint 05C-07 is the disciplinary action that the Board of Registration of Hazardous Waste Site Cleanup Professionals (the "Board") is currently pursuing against me as set forth in the Order to Show Cause and the Proposed Order Finding Sufficient Grounds for Discipline dated January 8, 2010, which I received on January 12, 2010.

2. On September 22, 2010 I submitted Direct Testimony in this action (Exhibit R-8), which included a copy of my resume as Exhibit R-9. All of the Exhibits in this action are available at: <http://decoulos.com/LSPBoard10AP01.htm>

3. My professional experience has included designing, peer reviewing and permitting stormwater utility systems, as well as permitting projects subject to jurisdiction under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40, for private parties, municipalities and the Wampanoag Tribe of Gay Head (Aquinnah). I have also served (upon invitation) on the Sewer and Stormwater Committee in my home town of Belmont, Massachusetts.

4. On September 22, 2010 I also submitted Rebuttal Testimony in this action (Exhibit RR-1).

5. As I stated repeatedly in my Rebuttal Testimony, it was my opinion that the significant stormwater outfall contamination into South Meadow Brook in Carver, Massachusetts was caused by numerous spills and discharges of oil and hazardous materials at the surface of the Eagle Gas site and the Main Street right-of-way that had been occurring for several decades.

6. The downgradient point for surface contamination at the Eagle Gas site to enter the stormwater collection system in the Main Street right-of-way was in front of property owned now or formerly by Paul Malley at 133 Main Street and was shown as the Downgradient Stormwater Inlet in Exhibit RR-8.

7. My professional opinions of the cause of contamination at the stormwater outfall were supported by visual observations of the stormwater collection system; a knowledge as to how the system functioned; PID readings of various stormwater control structures; results from soil borings and monitoring wells along the pervious backfill of the stormwater piping; and observations of storage and handling practices at the Eagle Gas site.

8. Exhibit R-20 cited in my Direct Testimony included a letter dated December 5, 2007, from Millie Garcia-Serrano of MassDEP to attorney Kevin J. McAllister, which stated that the transport of contaminants by overland flow or storm water runoff was not subject to Downgradient Property Status. Ms. Garcia-Serrano also stated in her letter that an “upgradient property owner would be required to include the contamination found at the downgradient property in its evaluation of the extent of contamination.” She went on to state that “It is very difficult to prove that historical flooding events or historical storm water flow events have caused hazardous material to be located downgradient, unless particular contaminants unique to an upgradient source can be specifically identified.”

9. On or about December 15, 2010, I received supplemental discovery information from the Southeast Regional office from the Petitioner's witness Cynthia A. Baran which I had been seeking since July 28, 2010. The information I received included an email from Ms. Baran to Millie Garcia-Surette dated February 28, 2006. A copy of the email is attached as Exhibit A.

10. Ms. Baran's February 28, 2006 email demonstrates that Mille Garcia-Surette (aka Millie Garcia-Serrano), the Deputy Regional Director of the Southeast Regional Office of MassDEP's Bureau of Waste Site Cleanup, was briefed and aware of contamination that was flowing into South Meadow Brook from the Eagle Gas site.

Signed under the pains and penalties of perjury this 14th day of January, 2011.

A handwritten signature in black ink, appearing to read "James J. Decoulos", written in a cursive style.

James J. Decoulos

EXHIBIT A

EMAIL FROM CYNTHIA A. BARAN TO
MILLIE GARCIA-SURETTE DATED FEBRUARY 28, 2006

Baran, Cynthia (DEP)

From: Baran, Cynthia (DEP)
Sent: Tuesday, February 28, 2006 2:46 PM
To: Garcia-Surette, Millie (DEP)
Cc: MacEachern, Lee (DEP)
Subject: FW: Eagle Gas - Carver

For Use in Intra-Agency Policy Deliberations

Hi Millie:

Just wanted to remind you that I plan to be in the field at Eagle Gas Station in Carver tomorrow to witness a planned video survey and, hopefully, the successful repair/effective sealing of the storm water drainage system that (through ongoing oil/groundwater infiltration of the piping system) is acting as a conduit for the release from Eagle Gas Station to S. Meadow Brook.

Thanks,
-Cynthia.

Cynthia A. Baran
Bureau of Waste Site Cleanup
Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Telephone: 508-946-2887
Facsimile: 508-947-6557
E-mail: cynthia.baran@state.ma.us

From: Chuck Klingler [<mailto:cklingler@ecsconsult.com>]
Sent: Tuesday, February 28, 2006 2:22 PM
To: Baran, Cynthia (DEP)
Cc: Shephard Johnson; Jim Marsh; Dan Felten
Subject: Eagle Gas - Carver

Hello All - Just an FYI to let you know that the Video taping of the drain line will commence tomorrow. I'll be out from Thursday (3/2) until Monday (3/13), if you need anything you can call me on my cell phone.

Thank You,

Chuck Klingler, LSP, LEP
Auburn Branch Manager

Environmental Compliance Services, Inc. (ECS)