

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 ADD EXHIBITS**

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

1. On July 28, 2010, I emailed a Request for Production of Documents to the Petitioner, the Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”).
2. On August 4, 2010, the Board responded to the Request for Production of Documents.
3. The August 4th response from the Board was only partially honored. The Board failed to provide any document “in the possession, custody or control of MassDEP or any MassDEP employee” because they are “a separate agency from MassDEP.”
4. On September 1, 2010, I made a public records request to Irene Lavoie, the MassDEP employee who is the Keeper of the Records for the Southeast Regional office, pursuant to the Massachusetts Public Records Law, G. L. c. 66, § 10, and the Public Records Access Regulations, 950 CMR 32.00, *et seq.*, for all communication between DEP representatives Cynthia Baran or Jonathan Hobill regarding the Eagle Gas Site. A copy of the records request was also sent to the Board’s witness Cynthia A. Baran of MassDEP via email.

5. After filing a Motion to Compel Production of Public Records on November 10, 2010 in this matter, on or about December 15, 2010, I received supplemental discovery information from the Southeast Regional office generated by Ms. Baran. The supplemental discovery information included documents described in the following paragraphs.

6. On March 30, 2004, Ms. Baran sent me an email and attachment regarding grant opportunities with the office of the Massachusetts Coastal Zone Management. The funding program was referred to as the Coastal Pollutant Remediation (CPR) Grant Program. The email is attached hereto as Exhibit A.

7. Ms. Baran provided the email to address grant programs that could help fund the cleanup of the stormwater outfall into South Meadow Brook from Main Street in Carver, Massachusetts.

8. As set forth in the email attachment, the CPR Program "...funds projects that address stormwater discharges from municipal roads, highways, or parking areas..." The attachment also stated that:

The primary goal of the CPR program is to improve coastal water quality by implementing best management practices for managing roadway runoff and by constructing boat pumpouts to collect and hold sewage generated by marine vessels in areas where pumpouts are insufficient or inoperable.

9. On August 11, 2005, Ms. Baran sent an email to Daniel Felten, the LSP who succeeded me at the Eagle Gas site, to inform him of the next round of CPR funding. The email is attached hereto as Exhibit B.

10. On September 26, 2005, Kevin Kiernan from MassDEP sent an email to Ms. Baran regarding a proposed Administrative Consent Order (ACO) to the former owner of the Eagle Gas site, Richard Nantais. The email is attached hereto as Exhibit C. In the email, Mr. Kiernan informed Ms. Baran that:

We don't want to get into liability issues. We don't make final determinations of liability and we're certainly not doing so in this convoluted case.

11. On November 17, 2005, Ms. Baran sent an email to Carver Fire Chief Craig Weston thanking him for his report of a gasoline spill at the Eagle Gas site during the delivery of gasoline to fill the underground storage tanks at the site. The email also included Chief Weston's description of the spill. The email is attached hereto as Exhibit D.

12. On February 28, 2006, Ms. Baran sent an email to Millie Garcia-Surette informing her of a planned video of the stormwater collection system in the Main Street right-of-way alleging that the system was "acting as a conduit for the release from Eagle Gas Station to S. Meadow Brook." The email is attached hereto as Exhibit E.

Signed under the pains and penalties of perjury this 18th 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
JAMES J. DECOULOS DATED FEBRUARY 28, 2006

Baran, Cynthia (DEP)

From: Baran, Cynthia (DEP)
Sent: Tuesday, March 30, 2004 4:41 PM
To: 'James J. Decoulos'
Subject: CPR Grant Notice
Attachments: CPR_earlynotice_draft2.doc

Hi Jim:

Here is the CPR Notice for your information and use.



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 900, Boston, MA 02114-2136
(617) 626-1200 fax: (617) 626-1240

Upcoming Grant Opportunity Coastal Pollutant Remediation Grant Program

The Massachusetts Office of Coastal Zone Management (CZM) will issue a Request for Response (RFR) for the Coastal Pollutant Remediation (CPR) grant program in **May of 2004**. The RFR, with an enclosed application, will be posted on the Commonwealth of Massachusetts' Procurement Access & Solicitation System at: <http://www.comm-pass.com>. A Pre-RFR informational meeting will be held on **Thursday, April 8 from 10:00 a.m. to 12:00, at the CZM Office: 251 Causeway Street, 8th Floor, Boston**. Potential respondents are strongly encouraged to attend this meeting to discuss the details of proposed projects, particularly since CZM can only offer general information to respondents after the RFR is posted. In addition, it is important for applicants to receive comments from CZM technical staff in advance regarding project design.

CZM administers two grant programs: the Coastal Pollutant Remediation grant program, and the Coastal Nonpoint Source grant program. The primary goal of both of CZM's grant programs is to improve coastal water quality by reducing or eliminating nonpoint sources of pollution through measures and strategies consistent with the Coastal Nonpoint Source Control Program. In addition, the CPR grant program compliments the Commonwealth's *Stormwater Management Volume I: Stormwater Policy Handbook and Volume II: Stormwater Technical Handbook*, as one source of funding available to communities to assist in remediating existing discharges from municipal roadways and parking lots.

CPR, funded through State legislative appropriations from Environmental Bonds, funds projects that address stormwater discharges from municipal roads, highways, or parking areas or for municipal boat sewage management efforts. The primary goal of the CPR program is to improve coastal water quality by implementing best management practices for managing roadway runoff and by constructing boat pumpouts to collect and hold sewage generated by marine vessels in areas where pumpouts are insufficient or inoperable. Proposals must clearly demonstrate that the source of pollution is either stormwater runoff from a roadway, bridge, parking lot or from vessel discharges. The funding available for CPR is typically \$600,000, on average. The Coastal NPS grant program was developed to complement CPR and to address more general areas of nonpoint source control. Funding available for CNPS is approximately \$250,000, and proposals are solicited in the fall.

The CPR grant program is open to any cities and towns located within the boundaries of the Massachusetts coastal watershed¹. CZM administers the grants on a reimbursement basis, and projects selected for funding must be completed by June 30, 2005. Additional information can be found on the CZM web page at: <http://www.state.ma.us/czm/cprgp.htm>. Answers to specific questions regarding the program are listed on the FY 2004 Frequently Asked Questions document, which can be found on the Comm-pass website at: http://www.comm-pass.com/Comm-PASS/Scripts/xdoc_view.idc?doc_id=015095&dept_code=ENV&cp_xx=. If you would like to discuss a potential project, contact Julie Keane, Coastal Pollutant Remediation Grants Coordinator, at: (617) 626-1235, or e-mail: julie.keane@state.ma.us.

¹ Cities and towns that are located within the following coastal watersheds: Boston Harbor (Mystic, Neponset, and Weymouth & Weir), Buzzards Bay, Cape Cod (Bay and Nantucket Sound), Charles, Concord, Ipswich, Islands, Merrimack, Mount Hope (Lower Mt. Hope), Narragansett (Upper Mt. Hope), Nashua, North Coastal, Parker, Shawsheen, South Coastal, Taunton, and the Ten Mile are eligible. Please refer to the CZM website to check specific city/town boundaries: <http://www.state.ma.us/czm/twnscws.htm>.



EXHIBIT B

EMAIL FROM CYNTHIA A. BARAN TO
DANIEL FELTEN DATED AUGUST 11, 2005

Baran, Cynthia (DEP)

From: Baran, Cynthia (DEP)
Sent: Thursday, August 11, 2005 3:52 PM
To: 'dfelten@ecsconsult.com'
Subject: Eagle Gas Station RTN 4-17582 - CZM Coastal Pollutant Remediation Grant Program & Sample Remedial Additives Approval Letter

Dan:

Here is the link to CZM's Coastal Pollutant Remediation Grant Program that I suggested you look into at our meeting yesterday: <http://www.mass.gov/czm/cprgp.htm> . The application submittal deadline for this year's funding round is September 16, 2005.

I have also attached an electronic copy of an example Remedial Additives Approval letter specifying the approval conditions that Jon Hobill referred to yesterday.

Please feel free to contact me if you have any questions or comments.

Thank you,
-Cynthia.



4-13584 Remedial
Additive appr...

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

EXHIBIT C

EMAIL FROM KEVIN KIERNAN TO CYNTHIA A. BARAN
DATED SEPTEMBER 26, 2005

Baran, Cynthia (DEP)

From: Baran, Cynthia (DEP)
Sent: Tuesday, September 27, 2005 8:52 AM
To: Kiernan, Kevin (DEP)
Subject: RE: Nantais ACO - Additional Proposed Language

Sounds good to me...I was uncomfortable with the language anyway...have you had a chance to review the rest of the draft ACO??? I have GIS training this morning, but would really like to meet with you if you have time to wrap this up. Thanks!

From: Kiernan, Kevin (DEP)
Sent: Monday, September 26, 2005 11:17 AM
To: Baran, Cynthia (DEP)
Subject: RE: Nantais ACO - Additional Proposed Language

Cindy:

Hobill and I talked. We don't want to get into liability issues. We don't make final determinations of liability and we're certainly not doing so in this convoluted case. Touch base with me on Tuesday.

Kevin

From: Baran, Cynthia (DEP)
Sent: Friday, September 23, 2005 5:45 PM
To: Kiernan, Kevin (DEP)
Cc: Hobill, Jonathan (DEP)
Subject: Nantais ACO - Additional Proposed Language

For Use in Intra-Agency Policy Deliberations

Hi Kevin:

Here are some additional points that Don Nagle would like us to consider for inclusion in the Determinations Section of the ACO. These points are not included in the redline/strikeout version that I e-mailed to you yesterday. Please let me know what you think. Thanks.

1. Nantais was not an "operator" of the Site, as at that term is defined under G.L. c. 21E, at the time of the release under RTN 4-13333/12848.
2. As a past owner or operator or a site from which there is or has been a release of gasoline only, Nantais is not a potentially responsible party or responsible party under G.L. c. 21E, §5(a) for any release or threat of release of oil at the Site.
3. Response actions conducted by Nantais at the Site have been conducted as an "other party" as this term is defined under G.L. c. 21E and 310 CMR 40.000 et seq.

Cynthia A. Baran
Bureau of Waste Site Cleanup

EXHIBIT D

EMAIL FROM CYNTHIA A. BARAN TO
CHIEF CRAIG WESTON DATED NOVEMBER 17, 2005

Baran, Cynthia (DEP)

From: Baran, Cynthia (DEP)
Sent: Thursday, November 17, 2005 11:47 AM
To: 'Chief Craig Weston'
Subject: RE: Eagle Gas

Chief Weston:

Thank you for the report and your prompt response to my inquiry.

-Cynthia.

From: Chief Craig Weston [<mailto:craig.weston@carverfire.org>]
Sent: Thursday, November 17, 2005 11:41 AM
To: Baran, Cynthia (DEP)
Subject: Eagle Gas

Cynthia,

This email is based upon our conversation from this morning regarding a fuel spill at 131 Main Street, Eagle Gas.

On November 7, 2005 at 15:26, the Carve Fire Department was notified of a reported Fuel Spill at 131 Main Street, Eagle Gas in Carver. I, Chief Craig Weston, responded to Eagle Gas, observing a large fuel truck, filling the underground gas tanks. A small gasoline spill was noticed next the the rear wheels of the fuel truck. I estimated the size of the spill to be less than 10 gallons, approximately 5 gallons of gasoline. DEP was not notified due to the size of the spill observed. The fuel truck delivery man was quickly cleaning up the spilled gasoline with speedy dry and absorbent pads. There was a drainage manhole in the area, but was diked off properly with no fuel product entering it. At 15:30 I cleared the scene, with the spill contained and half picked up.

Thank you ,
Craig Weston
Chief Craig Weston
Carver Fire Department
112A Main Street
Carver, Massachusetts 02330
<http://www.carverfire.org/>
On Call Professionals Serving Carver with Pride

EXHIBIT E

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)