

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

In the Matter of:)
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)

James J. Decoulos,)
Respondent)
_____)

Docket No.: LSP-10AP-01

**AFFIDAVIT OF JAMES J. DECOULOS
IN SUPPORT OF MOTION TO SUPPORT RELEVANCY OF PUBLIC RECORDS**

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

1. On June 15, 2004, I submitted an Immediate Response Action Status Report and Plan Modification (the "IRA Report and Plan Mod") to the Massachusetts Department of Environmental Protection (MassDEP) on behalf of Eagle Gas, Inc. (Eagle) for Release Tracking Number (RTN) 4-17582. See Exhibit B-33 at <http://decoulos.com/LSPBoard10AP01.htm>
2. RTN 4-17582 was caused by a leak in the diesel fuel delivery line on property at 131 Main Street in Carver, MA, which was owned by Najib Badaoui, as he was trustee of Marina Realty Trust. See page 18 of the Phase I Report and Tier Classification as Exhibit B-30 at <http://decoulos.com/LSPBoard10AP01.htm>
3. The Carver Assessors defined the property as on Map 74 as Parcel 17 and the deed for the property is recorded at the Plymouth Registry of Deeds (PRD) in Book 25358, Page 112 (the "Site").

4. By June 15, 2004, Light Non-Aqueous Phase Liquid (LNAPL) had been found off Site in the Main Street right-of-way in monitoring wells BP-5RR and DCW-1.

5. In the IRA Report and Plan Mod, I proposed that the LNAPL be excavated from a three foot wide by 50 foot long trench and transported to an approved disposal facility off-Site.

6. The proposed excavation of LNAPL contaminated soil was between the source of the diesel leak and the stormwater collection system in the Main Street right-of-way.

7. As of June 15, 2004, I observed no evidence of the subsurface diesel fuel release at the Site (RTN 4-17582) entering the stormwater collection system in the Main Street right-of-way. The evidence I relied on for this determination were visual observations of the drainage manholes adjacent to, and along the frontage of the Site, together with headspace screens of those manholes with a photo-ionization detector (PID).

8. In addition to the excavation and off Site disposal of LNAPL contaminated soil presented in the IRA Report and Plan Mod, I proposed that LNAPL be passively collected, with provisions made for the active collection of LNAPL. The provisions for active LNAPL collection included the installation of PVC conduits for electrical wiring, together with LNAPL supply and return lines. An active LNAPL collection pumping system was also proposed, if it was necessary to implement.

9. The proposed excavation of LNAPL contaminated soil described in the IRA Report and Plan Mod was consistent with recommendations made by the Licensed Site Professional Association (LSPA) Technical Practices Committee in its two white papers entitled “LNAPL and the Massachusetts Contingency Plan” (the “LNAPL White Paper”). Part I was dated April, 2005; and Part II was dated July, 2008. See Exhibits RR-38 and RR-39 at <http://decoulos.com/LSPBoard10AP01.htm>

10. In Part I of the LNAPL White Paper, it describes a key issue in addressing LNAPL - that it be “treated as a soil contaminant, as opposed to being considered a ‘separate’ phase contaminant.” Exhibit RR-38 at Page 12.

11. In Part II of the LNAPL White Paper, it was also concluded that the “LSPA recognized that LNAPL should be characterized primarily as a soil contaminant.” Exhibit RR-39 at Page 35.

12. In September of 2009, I managed the remediation of a disposal site impacted by LNAPL at 194-206 South Main Street in Middleton, MA (the “Middleton Site”). The disposal site was identified by MassDEP as RTNs 3-11914, 3-14481 and 3-28029.

13. A permanent solution was allegedly achieved for RTNs 3-11914 and 3-14481 in 1999. The closure was achieved after an LNAPL contaminated soil removal action. See http://db.state.ma.us/dep/cleanup/sites/Site_Info.asp?textfield_RTN=3-0014481

14. During a due diligence investigation in 2008, I observed 12 inches of LNAPL in a two-inch monitoring well from the middle of the 1999 soil removal action. Despite the two prior RTNs at the Middleton Site, MassDEP mandated that a new RTN be issued in 2008 and did not want to link the two prior RTNs.

15. No new sources of oil contributed to the discovery of LNAPL at the Middleton Site between 1999 and 2008

16. I managed the excavation, disposal and risk characterization of the LNAPL contaminated soil at the Middleton Site in 2008 and 2009 to achieve a new permanent solution. The excavation and soil removal contracting work was performed by Wright Industries, Inc. of Essex, MA. Four two-inch monitoring wells were placed in the middle of the LNAPL soil excavation and no LNAPL has been identified in any of the four wells (after two confirmatory

site visits approximately three months apart). See

http://db.state.ma.us/dep/cleanup/sites/Site_Info.asp?textfield_RTN=3-0028029

17. Photographs of the assessment and soil excavation of LNAPL contaminated soils at the Middleton Site are available at:

<http://picasaweb.google.com/decoulos/MiddletonAerospaceLNAPLAssessmentAndRemovalMiddleton?feat=directlink>

18. From the photographs of the Middleton Site, it can be seen that the soil removal excavation conducted in 1999 did not excavate enough LNAPL contaminated soil to properly reduce risk.

19. MassDEP has developed a workgroup to consider the recommended changes proposed by the LSPA Technical Practices Committee in the LNAPL White Paper (the “MassDEP LNAPL Workgroup”). See <http://www.mass.gov/dep/cleanup/lnaplwg.htm>

20. John Fitzgerald, a witness for the Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”) in this matter, is an employee of MassDEP and considered one of the most knowledgeable officials on petroleum and LNAPL contamination.

21. Mr. Fitzgerald is an active participant in the MassDEP LNAPL Workgroup.

22. I filed a public records request to Mr. Fitzgerald pursuant to the Massachusetts Public Records Law, G. L. c. 66, § 10, and the Public Records Access Regulations, 950 CMR 32.00, *et seq.* on September 1, 2010 seeking “All notes and internal MassMassDEP communication John Fitzgerald has generated or received related in any way to the work of the LNAPL Workgroup.”

23. None of the public records I have received from Mr. Fitzgerald or MassDEP to date have included any information I would have expected on the fundamental recommendation from the LNAPL White Paper – the revision of regulations and policies of MassDEP to address

LNAPL as a soil contaminant, rather than as a separate phase contaminant floating on the groundwater.

24. On November 4, 2010, I received six redacted documents from attorney Kathleen Delaplain of MassDEP pursuant to my September 1st request to Mr. Fitzgerald. Ms. Delaplain alleged that the redactions were necessary pursuant to the deliberative process exemption set forth in G.L. Chapter 4, Section 7(26)(d). Ms. Delaplain also alleged that 18 other documents fell completely under the deliberative process exemptions and refused to provide any of those 18 documents.

25. I suspect that the redacted records I received to date from MassDEP, or any additional documents which are alleged to fall under the deliberative process exemption, have been purposefully struck or withheld to prevent any disclosure by MassDEP on how it may be considering changing the regulations and policies regarding appropriate LNAPL remediation.

26. Any admission or discussion by MassDEP representatives on how the remediation of LNAPL could be addressed as a soil contaminant would be consistent with the proposal I presented in the IRA Report and Plan Mod I submitted to MassDEP for Eagle Gas on June 15, 2004.

Signed under the pains and penalties of perjury this 3rd day of December, 2010.

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

James J. Decoulos