

## DECOULOS & COMPANY

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ENVIRONMENTAL ENGINEERING & LAND PLANNING

VIA EMAIL

Tuesday, February 02, 2010

Anne Hartley, Case Administrator  
Office of Appeals & Dispute Resolution  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

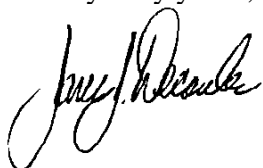
*RE: Order to Show Cause in the Matter of James J. Decoulos, Respondent  
Board of Registration of Hazardous Waste Site Cleanup Professionals  
Complaint No. 05C-07*

Dear Ms. Hartley:

Enclosed for filing in the above referenced matter are my Objections and Answer to the Order to Show Cause from the Board of Registration of Hazardous Waste Site Cleanup Professionals.

Thank you.

Very truly yours,



James J. Decoulos, PE, LSP  
[jamesj@decoulos.com](mailto:jamesj@decoulos.com)

cc: Lynn Peterson Read, Assistant General Counsel, Board of Registration of  
Hazardous Waste Site Cleanup Professionals *via email and first class mail*

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

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In the Matter of:

James J. Decoulos, Respondent

Docket No. \_\_\_\_\_

Complaint #05C-07

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**RESPONDENT’S OBJECTIONS AND ANSWER TO ORDER TO SHOW CAUSE**

James J. Decoulos (the “Respondent”) objects and answers to the Order to Show Cause as follows:

**INTRODUCTION**

1. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”) that sufficient grounds exist for any disciplinary action.
2. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he violated the Board’s Rules of Professional Conduct at 309 CMR 4.02(1) and 309 CMR 4.03(3)(b).

**JURISDICTION**

3. Denied.

**PARTIES**

4. Respondent is without sufficient information to either admit or deny the allegations contained in this paragraph.
5. Admitted.

### **REQUIREMENTS OF LAW**

6. Respondent admits that the allegations contained in this paragraph are substantially correct, but further answers that the recited Regulation speaks for itself.
7. Respondent admits that the allegations contained in this paragraph are substantially correct, but further answers that the recited Act and Regulation speaks for itself.

### **FINDINGS OF FACT REGARDING 131 MAIN STREET, CARVER**

8. Denied.
9. Respondent admits that the allegations contained in this paragraph are substantially correct.
10. Denied.
11. Denied.
12. Denied, but further answering that the prior owner hired several Licensed Site Professionals (LSPs).
13. Denied.
14. Respondent admits that the allegations contained in this paragraph are substantially correct.
15. Denied.
16. Denied.
17. Denied, but further answering that the NOR speaks for itself.
18. Denied, but further answering that the IRA Plan speaks for itself.
19. Denied.
20. Respondent admits that the allegations contained in this paragraph are substantially correct, but further denies the allegation of where the sheen originated.

21. Denied.
22. Respondent admits that the allegations contained in this paragraph are substantially correct, but further clarifies that screening was conducted on a stormwater collection system – not one pipe.
23. Denied, but further answering that the Field NOR speaks for itself.
24. Admitted, but further answering that the NOR speaks for itself.
25. Denied, but further answering that the NOR speaks for itself.
26. Respondent admits that the allegations contained in this paragraph are substantially correct, but further answers that the IRA Status Report speaks for itself.
27. Respondent admits that the allegations contained in this paragraph are substantially correct, but further answers that the IRA Status Report speaks for itself.
28. Denied, but further answering that the IRA Status Report speaks for itself.
29. Denied, but further answering that the IRA Status Report speaks for itself.
30. Denied, but further answering that the NON speaks for itself.
31. Denied, but further answering that the IRA Plan speaks for itself.
32. Denied, but further answering that the IRA Plan speaks for itself.
33. Denied, but further answering that the IRA Plan speaks for itself.
34. Respondent is without sufficient knowledge either to admit or deny what MassDEP representatives recorded in their notes, photographs or Release Log.
35. Denied, but further answering that the Request for IRA Plan Modification speaks for itself.
36. Denied, but further answering that the Request for IRA Plan Modification speaks for itself.

37. Denied, but further answering that the Request for IRA Plan Modification speaks for itself.
38. Denied, but further answering that the Request for IRA Plan Modification speaks for itself.
39. Denied, but further answering that the Request for IRA Plan Modification speaks for itself.
40. Denied, but further answering that the IRA Plan Modification speaks for itself.
41. Denied.
42. Denied, but further answering that the Phase I report speaks for itself.
43. Denied, but further answering that the Phase I report speaks for itself.
44. Denied, but further answering that the Phase I report speaks for itself.
45. Denied, but further answering that the Phase I report speaks for itself.
46. Denied, but further answering that any email correspondence from MassDEP speaks for itself.
47. Denied, but further answering that the IRA Plan Modification speaks for itself.
48. Denied.
49. Denied.
50. Denied, but further answering that the IRA Status Report and Plan Modification speaks for itself.
51. Denied, but further answering that the Denial of the IRA Plan Modification speaks for itself.
52. Denied, but further answering that the Denial of the IRA Plan Modification speaks for itself.

53. Denied, but further answering that the Denial of the IRA Plan Modification speaks for itself.
54. Denied, but further answering that any statement from MassDEP speaks for itself.
55. Denied, but further answering that requests from MassDEP regarding the IRA Plan Modification speaks for itself.
56. Denied, but further answering that the IRA Status Report and Plan Modification speaks for itself.
57. Denied, but further answering that the IRA Status Report and Plan Modification speaks for itself.
58. Denied, but further answering that the IRA Status Report and Plan Modification speaks for itself.
59. Denied, but further answering that the Denial of the IRA Plan Modification speaks for itself.
60. Denied.
61. Denied, but further answering that any notification to MassDEP speaks for itself.
62. Denied, but further answering that any correspondence between MassDEP and Respondent speaks for itself.
63. Denied, but further answering that any IRA Plan Modification or email communication between MassDEP and Respondent speaks for itself.
64. Denied, but further answering that the IRA Plan Modification speaks for itself.
65. Denied, but further answering that the IRA Plan Modification speaks for itself.
66. Denied, but further answering that the IRA Plan Modification speaks for itself.
67. Denied, but further answering that the IRA Plan Modification speaks for itself.
68. Denied, but further answering that the IRA Status Report speaks for itself.

69. Denied, but further answering that the IRA Status Report speaks for itself.
70. Denied, but further answering that the IRA Plan Modification speaks for itself.
71. Respondent is without sufficient knowledge either to admit or deny what occurred at or within the vicinity of 131 Main Street in Carver after filing his IRA Plan Modification on or about July 8, 2005.
72. Respondent is without sufficient knowledge either to admit or deny what occurred at or within the vicinity of 131 Main Street in Carver after filing his IRA Plan Modification on or about July 8, 2005.

**THE BOARD'S CONCLUSIONS REGARDING 131 MAIN STREET, CARVER**

73. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to act with reasonable care and diligence in violation of 309 CMR 4.02(1).
74. To the extent a responsive pleading is required, Respondent objects to the allegations by the Board that he failed to conduct or evaluate actions required under the MCP or by MassDEP.
75. Denied.
76. To the extent a responsive pleading is required, Respondent objects to the allegations by the Board that he did not follow the requirements and procedures set forth in G. L. c. 21E and 310 CMR 40.0000, in violation of 309 CMR 4.03(3)(b).

**FINDINGS OF FACT RELATED TO 633 NORTH MAIN STREET, RANDOLPH**

77. Respondent admits that the allegations contained in this paragraph are substantially correct.
78. Respondent admits that the allegations contained in this paragraph are substantially correct.
79. Respondent admits that the allegations contained in this paragraph are substantially correct.
80. Respondent admits that the allegations contained in this paragraph are substantially correct.
81. Respondent admits that the allegations contained in this paragraph are substantially correct.
82. Respondent admits that the allegations contained in this paragraph are substantially correct.
83. Respondent admits that the allegations contained in this paragraph are substantially correct, but further answers that the concentrations of VPH and any target analytes speak for themselves.
84. Respondent admits that the allegations contained in this paragraph are substantially correct.
85. Respondent denies that the allegations contained in this paragraph are substantially correct, but further answers that the concentrations of VPH and any target analytes speak for themselves.
86. Respondent admits that the allegations contained in this paragraph are substantially correct.
87. Denied.



88. Denied.

89. Respondent admits that the allegations contained in this paragraph are substantially correct with respect to the risk characterization used to achieve a Class A-3 RAO for RTNs 3-15188 and 3-15653.

90. Denied.

91. Denied.

92. Denied.

93. Respondent admits that the allegations contained in this paragraph are substantially correct and further answers that he followed available guidance published by MassDEP.

94. Denied.

95. Admitted, but further answering that the NON speaks for itself.

96. Denied, but further answering that the NON speaks for itself.

97. Denied, but further answering that the NON speaks for itself.

98. Denied, but further answering that the NON speaks for itself and that Respondent's "waste site cleanup activity opinion" was later affirmed with post-Response Action Outcome monitoring which MassDEP reviewed.

99. Denied, but further answering that the NON speaks for itself and that Respondent's "waste site cleanup activity opinion" was later affirmed with post-Response Action Outcome monitoring which MassDEP reviewed.

## **THE BOARD'S CONCLUSIONS REGARDING 633 NORTH MAIN STREET, RANDOLPH**

100. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to act with reasonable care and diligence in violation of 309 CMR 4.02(1).

101. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to act with reasonable care and diligence in violation of 310 CMR 40.0901(4).

102. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to adequately define the horizontal and vertical extent of the contamination in violation of 310 CMR 40.0904(2).

103. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to estimate potential receptor exposures in violation of 310 CMR 40.0926(3)(b)(1).

104. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to evaluate risk to public health, safety, welfare or the environment in violation of 310 CMR 40.0973(7) and 310 CMR 40.1003(1).

105. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to show that the source of contamination was eliminated or controlled in violation of 310 CMR 40.1003(5).

106. To the extent a responsive pleading is required, Respondent objects to the allegation by the Board that he failed to follow the requirements and procedures set forth in G. L. c. 21E and 310 CMR 40.0000, in violation of 309 CMR 4.03(3)(b).

## **AFFIRMATIVE DEFENSES**

1. Najib Badaoui of Eagle Gas, Inc., the individual who initiated this action through the filing of Complaint No. 05C-07, requested that the Board withdraw his Complaint. The Complaint was filed based upon a fee dispute between Eagle and Respondent. The Complaint was a retaliatory action by Badaoui's attorney Shephard S. Johnson, Jr. based upon a civil complaint that Respondent filed against Eagle Gas, Inc. in Plymouth Superior Court (Civil Action No. 05-1428-A). Justice Suzanne DeVecchio granted Respondent an attachment to Eagle's real estate on December 16, 2005.

The civil case was settled and the attachment of Eagle's real estate released. The withdrawal of Badaoui's Complaint to the Board was an integral part of the settlement. The Board is exceeding its statutory authority and its own regulations at 309 CMR 7.00 *et seq.* by continuing to pursue disciplinary actions against Respondent.

2. The Board fails to state a claim as to how Respondent's alleged failures to follow the requirements and procedures set forth in G. L. c. 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000 *et seq.* (the "MCP") posed a threat to protect public health, safety, welfare or the environment at either of the two disposal sites in performing his duties to assess, contain or remove the source of the petroleum releases under his control.

3. As the Order relates to the Carver site, the significant petroleum and hazardous material contamination observed at the South Meadow Brook outfall was caused by historic Nonpoint Source Pollution (NPS) into the stormwater collection system within the Main Street right-of-way. NPS is adequately regulated by the U.S. Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act").

4. As the Order relates to the Carver site, the significant petroleum and hazardous material contamination observed at the South Meadow Brook outfall was caused by numerous historic spills of oil on the surface of the Eagle Gas site over many years which migrated into the stormwater collection system within the Main Street right-of-way. This type of oil discharge on the ground surface is adequately regulated by EPA under the Spill Prevention, Control and Countermeasure (SPCC) Program of the Clean Water Act.

5. As the Order relates to the Carver site, the significant petroleum and hazardous material contamination observed at the South Meadow Brook outfall was caused predominately by historic surface runoff from the Eagle Gas site into the stormwater collection system within the Main Street right-of-way. MassDEP has proposed stormwater management regulations at 314 CMR 21.00 to adequately regulate these same types of surface discharges from gas stations which lead to degraded surface water quality problems.

6. As the Order relates to the Carver site, the Licensed Site Professionals (LSPs) responsible for addressing the petroleum releases originally reported to MassDEP as Release Tracking Number (RTN) 4-12848 and RTN 4-13333 are necessary parties to this proceeding. These two releases, reported more than four years earlier than the releases handled by the Respondent, were directly attributed to underground petroleum contamination originating from 131 Main Street.

7. The LSPs responsible for assessing RTNs 4-12848 and 4-13333 were obligated to address the potential of petroleum leaching into the stormwater collection system within the Main Street right-of-way, address the potential for Imminent Hazards, Critical Exposure Pathways and conditions which could pose a Substantial Release Migration of oil and waste oil into South Meadow Brook.

8. As the Order relates to the Carver site, the town of Carver is a necessary party to this proceeding based upon its failure to adequately maintain and protect the “municipal separate storm sewer system” (otherwise known as an “MS4”) under its jurisdiction as required by the Clean Water Act.

9. As the Order relates to the Carver site, MassDEP’s insistence to place an interceptor trench on the opposite side of the stormwater drain from the source of the petroleum release caused a threat to public health, safety, welfare and the environment and led to the unnecessary migration of diesel and gasoline fuels into the stormwater collection system which discharged into South Meadow Brook. Respondent was at the mercy of MassDEP oversight due to the Tier I status of the Carver site. MassDEP is a necessary party to this proceeding.

10. As the Order relates to the Carver site, MassDEP’s order to place an interceptor trench on the opposite side of the stormwater drain from the source of the petroleum release created an Imminent Hazard which led to the unnecessary migration of diesel and gasoline fuels into the stormwater collection system. Respondent was at the mercy of MassDEP oversight due to the Tier I status of the Carver site. MassDEP is a necessary party to this proceeding.

11. As the Order relates to the Carver site, MassDEP’s mandate to install an interceptor trench on the opposite side of the stormwater drain from the source of the petroleum release violated the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (RCRA) and the implementing regulations promulgated by EPA at 40 Code of Federal Regulations (CFR) Part 280 *et seq.* MassDEP violated its duties to EPA under said statute and regulations by inadequately managing corrective actions at the Carver site. Respondent was at the mercy of MassDEP oversight due to the Tier I status of the Carver site. MassDEP is a necessary party to this proceeding.

12. As the Order relates to the Carver site, Respondent's proposed plan to excavate the Light Non-Aqueous Phase Liquid (LNAPL) soil and passively collect the LNAPL met standard industry practices and was an appropriate plan based on reasonable care which is normally applied with knowledge and skill exercised by LSPs.

13. As the Order relates to the Carver site, MassDEP's insistence to place an interceptor trench in the middle of the Main Street right-of-way and actively collect LNAPL was unreasonably expensive, a threat to public safety, unsustainable and caused a significantly higher discharge of greenhouse gas emissions to the atmosphere. Respondent was at the mercy of MassDEP oversight due to the Tier I status of the Carver site. MassDEP is a necessary party to this proceeding.

14. As the Order relates to the Randolph site, Respondent's "waste site cleanup activity opinion" was affirmed with post-Response Action Outcome monitoring which demonstrated that Respondent's conclusions were appropriate and protective of public health, safety, welfare and the environment.

Dated: February 2, 2010

Respectfully submitted,

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

James J. Decoulos, PE, LSP  
Decoulos & Company, LLC  
185 Alewife Brook Parkway  
Cambridge, MA 02138  
[jamesj@decoulos.com](mailto:jamesj@decoulos.com)  
617-489-7795

## **STATEMENT OF SERVICE**

Matter of James J. Decoulos, Respondent  
Docket No. \_\_\_\_\_

LSP Board Complaint No. 05C-07

I, James J. Decoulos, do hereby certify that I caused a copy of the RESPONDENT'S OBJECTIONS AND ANSWER TO ORDER TO SHOW CAUSE dated February 2, 2010 regarding the above referenced matter to be served on the following parties by email in Adobe Acrobat™ format:

Anne Hartley, Case Administrator  
Office of Appeals & Dispute Resolution  
MassDEP  
One Winter Street  
Boston, MA 02108  
[anne.hartley@state.ma.us](mailto:anne.hartley@state.ma.us)

DEPARTMENT

Lynn Peterson Read, Assistant General Counsel      BOARD  
Board of Registration of  
Hazardous Waste Site Cleanup Professionals  
One Winter Street  
Boston, MA 02108  
[lynn.read@state.ma.us](mailto:lynn.read@state.ma.us)

I further state that I spoke to Case Administrator Anne Hartley and Assistant General Counsel Lynn Peterson Read on January 29, 2010 by telephone to confirm that they would accept service of my Answer by Electronic Medium as set forth in 801 CMR 1.01(5)(f).

Signed under the penalties of perjury this 2<sup>nd</sup> day of February, 2010.



James J. Decoulos, PE, LSP  
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