

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.: LSP-10AP-01

**DIRECT TESTIMONY OF JAMES J. DECOULOS**

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2       1.    My names is James J. Decoulos and my business address is Decoulos & Company,  
3    LLC, 185 Alewife Brook Parkway, Cambridge, MA 02138.

4       2.    I have reviewed the testimonies and exhibits sponsored from Cynthia A. Baran, Robert  
5    C. Luhrs, Ian M. Phillips and John Fitzgerald which were filed on behalf of the Board of  
6    Registration of Hazardous Waste Site Cleanup Professionals (the “Board”) on August 25, 2010.

7       3.    All of the testimony and exhibits presented by the Board and myself are posted at  
8    <http://www.decoulos.com/LSPBoard10AP01.htm> (the “Web Page”). The exhibits cited within  
9    this Direct Testimony contain the prefix R (to signify Respondent) and the exhibits cited within  
10   my Rebuttal Testimony contain the prefix RR (to signify Respondent Rebuttal).

11       4.    To assist this forum to more clearly understand the issues of both sites subject to this  
12    appeal, I have posted photographs of each site on the web based album service Picasa as part of  
13    my Rebuttal Testimony. Photographs of the history and response actions at the Eagle Gas site in  
14    Carver, Massachusetts are cited as Exhibit RR-2 and are posted at

1 [http://picasaweb.google.com/decoulos/PetroleumSpillResponsesAtEagleGasStationCarver?feat=](http://picasaweb.google.com/decoulos/PetroleumSpillResponsesAtEagleGasStationCarver?feat=directlink)  
2 [directlink](http://picasaweb.google.com/decoulos/PetroleumSpillResponsesAtEagleGasStationCarver?feat=directlink)

3 5. Photographs of the response actions at the Speedy Lube site in Randolph,  
4 Massachusetts are cited as Exhibit RR-3 and are posted at

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

6 6. My resume is presented as Exhibit R-9.

7 7. My professional experience began with supporting and working for my father in his  
8 civil engineering and land surveying practice. In this capacity, I was involved in designing  
9 septic systems, utilities and subdivisions; preparing plans for recording at various registries of  
10 deeds and registration at the Massachusetts Land Court; and preparing wetland permit  
11 applications for approval under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40.

12 8. The work with my father involved measuring hundreds of utility inverts and conducting  
13 hundreds of percolation tests for septic system designs under Title V, 310 CMR 15.000.

14 9. During the 1980s, I worked for Camp, Dresser & McKee and Rizzo Associates, Inc. as  
15 an environmental engineer.

16 10. In 1990, I left Rizzo Associates and began my own consulting practice.

#### 17 18 BACKGROUND OF THE LSP BOARD COMPLAINT

19 11. Najib Badaoui of Eagle Gas, Inc. filed a complaint against me with the Board on  
20 December 15, 2005. I received notification from Board Investigator Allen Wyman sometime on  
21 or around December 21, 2005 notifying me of the complaint. *See* Exhibit R-10.

22 12. The complaint to the Board was filed by attorneys James W. Marsh and Shephard S.  
23 Johnson, Jr. on behalf of Eagle Gas, Inc. on December 13, 2005. *See* Exhibit RR-14.

1       13. The complaint to the Board was a retaliatory action for a superior court complaint that  
2 Eagle Gas, Inc. knew was forthcoming.

3       14. On December 15, 2005, my complaint to the trial court was filed in Plymouth Superior  
4 Court and Justice Suzanne V. Del Vecchio granted a writ of attachment. The superior court  
5 complaint was filed due to recover approximately \$80,000.00 that was due to Decoulos &  
6 Company, LLC and Wright Industries, Inc. from Eagle Gas, Inc. See Exhibits RR-15, RR-16  
7 and RR-17.

8       15. A Settlement Agreement was reached with Eagle Gas, Inc. on July 23, 2007 to resolve  
9 both the LSP Board complaint and the Plymouth Superior Court complaint. See Exhibit R-11.

10       16. On August 6, 2007, Shephard S. Johnson, Jr. requested that the LSP Board withdraw  
11 the complaint he filed on December 13, 2005. See Exhibit R-12.

12       17. On August 15, 2007, Assistant General Counsel Lynn Peterson Read notified Mr.  
13 Johnson that the LSP Board denied his request to withdraw the complaint against me. See  
14 Exhibit R-13.

15       18. I did not receive a copy of the letter from Ms. Read to Mr. Johnson until I conducted a  
16 file review in this matter earlier this year.

17       19. On January 12, 2010, I received an Order to Show Cause and a Proposed Order Finding  
18 Sufficient Grounds for Discipline and Notice of Noncompliance from the Board.

19  
20                   ALLEGATIONS REGARDING 131 MAIN STREET, CARVER

21       20. I repeat the facts, allegations and opinions expressed in my Rebuttal Testimony as set  
22 forth in Paragraphs 4 through 132. My Rebuttal Testimony of September 22, 2010 is  
23 incorporated into this Direct Testimony.

1        21.    A meeting was held at the Southeast Regional office of the Massachusetts Department  
2    of Environmental Protection (the “Department” or “MassDEP”) on March 11, 2004. My notes  
3    from the meeting are provided as Exhibit R-13.

4        22.    A second meeting was held at the Southeast Regional office of MassDEP on April 21,  
5    2004. My notes from the meeting are provided as Exhibit R-14.

6        23.    A third meeting was held at the Southeast Regional office of MassDEP on July 21,  
7    2004. My notes from the meeting are provided as Exhibit R-15.

8        24.    All three meetings at MassDEP involved disputes, claims and potential remedies to  
9    resolve the oil and hazardous material releases associated with Release Tracking Numbers  
10   (RTNs) 4-12848, 4-13333, 4-17582 and 4-17825.

11       25.    On September 17, 2010, I received a list of active remedial cost claims and  
12   reimbursements from 2004 to 2010 under G. L. c. 21J for the Eagle Gas site from Kevin F.  
13   Horrigan of the Massachusetts UST Program (the “21J Cost List for Eagle”). The list was  
14   provided in Microsoft Excel format and I have modified the spreadsheet to highlight the  
15   electrical utility costs and total costs paid to Eagle Gas, Inc. for active remediation. *See* Exhibit  
16   R-16.

17       26.    According to the 21J Cost List for Eagle, \$30,503.69 has been paid by the 21J Program  
18   for electrical utilities and the total active remedial costs are \$152,914.05.

19       27.    The 21J Program is funded through a 2 ½ cent gasoline tax on every gallon of gasoline  
20   or diesel fuel that is purchased by consumers and businesses.

21       28.    On March 10, 2009, Liz Callahan of MassDEP made a presentation to the LSP  
22   Association Membership Meeting on “Sustainable Remediation within the MCP Framework”.  
23   *See* Exhibit R-17.

1       29. MassDEP has a web page dedicated to the principles of Sustainable Remediation. See  
2       <http://www.mass.gov/dep/cleanup/priorities/susrem.htm>

3       30. The active remedial system that has been approved by MassDEP at the Eagle Gas site  
4       has been an unnecessary burden on the taxpayers and a violation of the Department's own  
5       Sustainable Remediation objectives.

6       31. Information I gathered on past handling and oil storage practices at the Eagle Gas site,  
7       suggested that there were numerous spills on the ground surface and poor housekeeping.

8       32. Photographs 2 and 3 of Exhibit RR-2 show the condition of the Eagle Gas site from an  
9       aerial view in 1971 and 1992.

10      33. Photographs 4 – 7 of Exhibit RR-2 are photographs I received of the Eagle Gas site  
11      prior to his purchase of the site from Richard Nantais, as he was trustee of Nantais Realty Trust.

12      34. The U.S. Environmental Protection Agency (EPA) requires that facilities which store  
13      more than 1320 gallons of oil in aboveground containers obtain a Spill Prevention Control and  
14      Countermeasure (SPCC) Plan. *See* Exhibit R-18.

15      35. There is a strong probability that the Eagle Gas site was storing more than 1320 gallons  
16      of oil during the 1990s.

17      36. I am aware that the Bureau of Waste Site Cleanup of MassDEP has made several  
18      determinations that surface water contamination is not subject to jurisdiction under G.L. c. 21E  
19      or the MCP.

20      37. On October 1, 2008, Mary Gardner of MassDEP asserted in a letter to Louis Celozzi,  
21      Town Administrator for the town of Milford, that the transport of contaminants by overland flow  
22      of stormwater was not subject to 21E jurisdiction. *See* Exhibit R-19.

38. I am aware that the town of Milford has challenged this determination and has filed a complaint against MassDEP in Worcester Superior Court (Civil Action No. 2008-2581E).

39. On December 5, 2007, Millie Garcia-Serrano of MassDEP asserted in a letter to attorney Kevin J. McAllister that the transport of contaminants by overland flow or storm water runoff was not subject to 21E jurisdiction. *See* Exhibit R-20.

I, James J. Decoulos, under the pains and penalties of perjury, adopt this direct testimony and state that it is true to the best of my knowledge, information and belief. I further state that if asked questions in this testimony, I would provide the same answers.

Dated: September 22, 2010

Respectfully submitted,

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

James J. Decoulos

## STATEMENT OF SERVICE

I, James J. Decoulos, do hereby certify that I caused a copy of the DIRECT TESTIMONY OF JAMES J. DECOULOS dated September 22, 2010 to be served on the following parties by electronic mail:

Anne Hartley, Case Administrator                      OADR  
Office of Appeals and Dispute Resolution  
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Lynn Peterson Read, Esq.                              BOARD  
Board of Registration of  
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Signed under the penalties of perjury this 22<sup>nd</sup> day of September, 2010.



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