

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND 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

**SUPPLEMENTAL REBUTTAL TESTIMONY NO. 2  
OF JAMES J. DECOULOS**

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

3        2.    All of the testimony and exhibits presented by the Board and myself are posted at  
4    <http://www.decoulos.com/LSPBoard10AP01.htm> (the “Web Page”). The exhibits cited within  
5    this Supplemental Rebuttal Testimony No. 2 contain the prefix RR (to signify Respondent  
6    Rebuttal) and begin with this second supplemental testimony as RR-56.

7        3.    On October 7, 2010, I received an email from Board attorney Lynn Peterson Read,  
8    which provided new evidence that I have been seeking for several months on Release Tracking  
9    Numbers (RTNs) 4-12848 and 4-13333 in Carver, Massachusetts.

10       4.    The information I received from the Board on October 7, 2010 included a photograph  
11    of the Eagle property, which appears to have been taken in either 1997 or 1998. The photo has  
12    been posted on the dedicated Picasa web album for the Eagle Gas Station at 131 Main Street in  
13    Carver, Massachusetts (the “Eagle Site”) as Photograph 163. *See*  
14    [http://picasaweb.google.com/lh/photo/2A3zHjA\\_nrbif39x1w7BAA?feat=directlink](http://picasaweb.google.com/lh/photo/2A3zHjA_nrbif39x1w7BAA?feat=directlink)

1        5.    Photograph 163 shows staining on the paved surface of the Eagle Site from the left  
2 front corner of the building, or the easterly corner of the building, onto the Main Street (Route  
3 58) surface.

4        6.    The staining of the paved surface appears indicative of oil spills that occurred on the  
5 easterly most portion of the Eagle Site. Any oil spills which occurred on the easterly most  
6 portion of the Eagle Site would have flowed by gravity, or been carried by stormwater, to the  
7 downgradient catch basin shown in Exhibit RR-8.<sup>1</sup>

8        7.    The information I received from the Board on October 7, 2010 included a Release Log  
9 Form Attachment from MassDEP dated March 12, 1997 prepared by Julie Hutcheson, which  
10 documented a telephone conversation with Ken Nantais, the son of former Eagle property owner  
11 Richard Nantais. It appears from the Release Log Form Attachment that the previous owner  
12 operated a junk yard at the Eagle Site. *See* Exhibit RR-57.

13       8.    The information I received from the Board on October 7, 2010 included a Notice of  
14 Responsibility dated August 11, 1997 issued to Richard Nantais (the "NOR"). Page 3 of the  
15 NOR states that the historic activities at the Eagle Site "are not well known but do include an  
16 auto junkyard operation." *See* attached Exhibit RR-58.

17       9.    Based on the topography shown in the site plan presented as Exhibit RR-8, which was  
18 the same as that presented in the 24" x 36" site plan inserted in the Phase I Initial Site  
19 Investigation and Tier Classification dated April 30, 2004 (Exhibit B-30), oil spills and  
20 stormwater surface flows from an auto junkyard operation on the easterly and southeasterly areas  
21 of the Eagle Site would flow to the downgradient catch basin shown in Exhibit RR-8 (aka CB 4).

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<sup>1</sup> This catch basin was also described in my affidavit of September 29, 2010 as Catch Basin No. 4 or CB 4.

1        10. Contrary to the statements of Cynthia A. Baran, which were expressed in her direct  
2 testimony of August 25, 2010, the staining of the paved surface presented in Photograph 163 and  
3 the historic use of the Eagle Site as an automotive junkyard operation, support the evidence I  
4 collected in 2003 and 2004 which demonstrated that the contamination of the stormwater  
5 collection system in the Main Street right-of-way originated at the downgradient catch basin  
6 shown in Exhibit RR-8.

7        11. The staining of the paved surface presented in Photograph 163 and the historic use of  
8 the Eagle Gas Site as an automotive junkyard operation further support my determination that the  
9 gross oil contamination in the stormwater collection system was caused by numerous historic  
10 surface spills and dumping that flowed onto the asphalt pavement to the downgradient catch  
11 basin shown in Exhibit RR-8.

12        12. The downgradient catch basin shown in Exhibit RR-8 is in front of the property owned  
13 now or formerly by Paul Malley at 133 Main Street, and is the same catch basin which collected  
14 surface water poured on the concrete pad at the Eagle Site on June 26, 2008, as seen in  
15 Photographs 155, 156, 157, 158, 161 and 162.

16        13. The water poured onto the concrete pad at the Eagle Site on June 26, 2008 flows in the  
17 same direction as the staining which is evident in Photograph 163.

18        14. In 2004, the downgradient catch basin was approximately 150 feet southeast from the  
19 closest observed diesel fuel which formed as Light Non-Aqueous Phase Liquid (LNAPL) in the  
20 ground.

21        15. The information I received from the Board on October 7, 2010 included a newspaper  
22 article entitled "Gas station must clean up pollution". A hand written note on the article shows  
23 the date as September 10, 1997. *See* Exhibit RR-59.

1       16. In the newspaper article it was stated that contamination from the Eagle Site was  
2 “suspected of polluting a residential well across the street.”

3       17. The stormwater collection system in the Main Street right-of-way, which discharges  
4 into South Meadow Brook, runs between the Eagle Site and the residential well across the street.

5       18. In 1997 or 1998, either MassDEP or the Licensed Site Professional for Richard Nantais,  
6 should have inspected the stormwater collection system to determine if a condition of Substantial  
7 Release Migration existed as a result of the potential migration of gasoline across the street and  
8 the underground interception of gasoline into the stormwater collection system.

9       19. To the best of my knowledge and belief, there was no inspection of the stormwater  
10 collection system by MassDEP or any LSP until I made observations of the system on May 16,  
11 2003.

12       20. The information I received from the Board on October 7, 2010 included notes and draft  
13 rider language on the negotiation to sell the Eagle Site in 1997. Addendum A-1 stated that:

14               The Seller warrants that Seller either has completed or will complete the  
15               following remedial actions:

16  
17               (a) The removal of all surface and subsurface structures which may be or  
18               may have been the source of leakage;...

19  
20               *See Exhibit RR-60.*

21       21. It is apparent that the Seller (Richard Nantais), or his representatives, were aware that  
22 remedial actions were necessary to address both surface and subsurface contamination from the  
23 Eagle Site in 1997.

24       22. The information I received from the Board on October 7, 2010 included a Release Log  
25 Form Attachment, dated November 20, 1997, which stated that groundwater could be filtered for  
26 sampling at 132 Main Street (RTN 4-12848) - if there was a problem. *See Exhibit RR-61.*

1        23. Contrary to the statements of John Fitzgerald, which were expressed in his direct  
2 testimony of August 25, 2010 on pages 8 and 9, MassDEP employee Julie Hutcheson did not  
3 provide any discussion or justification as to why groundwater filtering was acceptable at 132  
4 Main Street in Carver to address the release identified as RTN 4-12848.

5        24. On September 1, 2010, I made a request to Mr. Fitzgerald pursuant to the  
6 Massachusetts Public Records Law, G. L. c. 66, § 10, and the Public Records Access  
7 Regulations, 950 CMR 32.00, *et seq.* for “All notes and internal MassDEP communication John  
8 Fitzgerald has generated or received related in any way to the work of the LNAPL Workgroup.”

9        25. I expect that the records I am seeking from Mr. Fitzgerald will support the proposed  
10 excavation of LNAPL contaminated soil I presented in the Immediate Response Action Status  
11 Report and Plan Modification I presented to MassDEP on June 15, 2004 (Exhibit B-33).

12        26. Recent advances in understanding the fate and remediation of LNAPL contamination  
13 have radically altered how the contamination should be addressed – and are consistent with the  
14 proposals I submitted to MassDEP for the Eagle Site in 2004.

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: November 12, 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 SUPPLEMENTAL REBUTTAL TESTIMONY NO. 2 OF JAMES J. DECOULOS dated November 12, 2010 to be served on the following parties by electronic mail:

Anne Hartley, Case Administrator                      OADR  
Office of Appeals and Dispute Resolution  
[Anne.hartley@state.ma.us](mailto:Anne.hartley@state.ma.us) and  
[Caseadmin.oadr@state.ma.us](mailto:Caseadmin.oadr@state.ma.us)

Robert Traynor                                              OADR  
Office of Appeals and Dispute Resolution  
[Robert.traynor@state.ma.us](mailto:Robert.traynor@state.ma.us)

Lynn Peterson Read, Esq.                              BOARD  
Board of Registration of  
Hazardous Waste Site Cleanup Professionals  
[Lynn.read@state.ma.us](mailto:Lynn.read@state.ma.us)

Signed under the penalties of perjury this 12<sup>th</sup> day of November, 2010.



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