

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

In the Matter of:)
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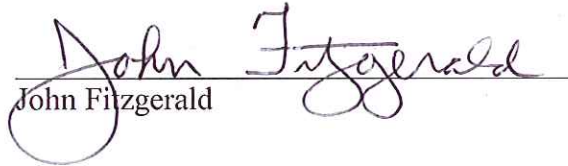
James J. Decoulos,
Respondent)
)
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Docket No.: LSP-10AP-01

AFFIDAVIT OF JOHN FITZGERALD

I, John Fitzgerald, under the pains and penalties of perjury, state that I am the John Fitzgerald whose prepared rebuttal testimony is attached to this affidavit. I further state that, if asked the questions contained in the text of such testimony, I would give the answers that are set forth in the text of such testimony. I adopt the aforesaid answers as my rebuttal testimony in this proceeding.

Signed under the pains and penalties of perjury this 7th day of October, 2010.


John Fitzgerald

**COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION OF HAZARDOUS WASTE SITE
CLEANUP PROFESSIONALS
before the
OFFICE OF APPEALS AND DISPUTE RESOLUTION**

In the Matter of James J. Decoulos Docket No. 10 AP 01

**Prepared Rebuttal Testimony of
John Fitzgerald
Witness in support of the Initial Determination of the
Board of Registration of Hazardous Waste Site Cleanup Professionals**

1 **Q1. Please state your name and business address.**

2 A. My name is John Fitzgerald and my business address is the Department of
3 Environmental Protection, Northeast Regional Office, 205B Lowell Street, Wilmington,
4 MA 01887.

5

6 **Q. Have you reviewed the full text of the rebuttal and direct testimony of**
7 **Mr. Decoulos and his witnesses and the Exhibits submitted in support of that**
8 **testimony?**

9 A. Yes.

10

11 **Q. Did any of the testimony filed by Mr. Decoulos and his witnesses alter**
12 **your opinion regarding Mr. Decoulos's work at the Speedy Lube site in Randolph,**
13 **Massachusetts?**

14 A. No. Much of Mr. Decoulos' testimony involved efforts to justify his
15 actions after-the-fact by articulating considerations and rationales that were not disclosed

1 or discussed in the RAO , and/or by citing work done previously by another firm (SAGE
2 Environmental).

3 An example of the above is contained on Page 47 of Mr. Decoulos' Rebuttal
4 Testimony, on lines 19 – 20, where he states “It was my opinion that the bedrock acted as
5 a barrier to prevent the downgradient migration of contaminants at the site”, followed by
6 lines 21-22, where a statement is made “The data used to reach the Waste Site Cleanup
7 Advisory Opinion included prior work by SAGE Environmental, as cited in the RAO
8 documentation”.

9 With regard to the former, there is no mention or discussion in the RAO report
10 about bedrock acting as a barrier to groundwater flow; a rather important element in the
11 evaluation of subsurface contaminant transport. With regard the latter, there are only 5
12 sentences in the RAO report that reference (but do not discuss) work previously
13 conducted at the site by SAGE, along with a listing of reports in the “Reference” section.
14 Apparently, Mr. Decoulos believes that persons reviewing his RAO report should (a)
15 locate and read the reports prepared by SAGE, (b) assume that Mr. Decoulos has
16 determined that all presented information, data, and conclusions in those reports were
17 valid at the time of generation, and remain valid and relevant 4 years later, and (c) accept
18 that there is no need to further mention, discuss, or integrate this material into the current
19 work product. This is not acceptable.

20 **Q. In paragraph 124 of his rebuttal testimony, Mr. Decoulos states, “If**
21 **LNAPL was present in any of the new monitoring wells established on May 8, 2002,**
22 **the dissolved phase BTEX or VPH fractions would have been significantly higher.**
23 **Furthermore, LNAPL would have been easily visible in the soil cores advanced on**

1 **that same date. Recent advances in LNAPL evaluation suggest that soil saturation**
2 **is a more accurate determinant of LNAPL presence.” Does his testimony influence**
3 **your opinion?**

4 A. No. Initially, it should be noted that “recent advances in LNAPL
5 evaluation” are not relevant to the validity of his 2002 Response Action Outcome report,
6 though it is consistent with an “after the fact” attempt to rationalize poor quality work.

7 In my opinion, it is not clear that LNAPL near or even in the soil boring would
8 have been “easily visible” in soil cores, and it is not clear that dissolved hydrocarbon
9 concentrations would have been significantly higher. What is clear is the necessity of
10 gauging existing monitoring wells for the presence of LNAPL. This is addressed in the
11 **2001 Final Draft VPH/EPH Policy,”** which was in effect when Mr. Decoulos submitted
12 his June 2002 RAO. In Section 4.6.2 of this policy, notation is made – in bold font –

13 **While LNAPL occurrence and measurement is a complicated**
14 **matter, it is possible to make one simple conclusion: it is usually not**
15 **possible to adequately characterize this concern without sufficient**
16 **temporal gauging data. At a minimum, this should include at least 4**
17 **rounds of gauging during the 4 seasons of the year”.**
18

19 In recent years, it is true that some LSPs have proposed an LNAPL approach that
20 focuses on the evaluation of soil cores. However, this proposal involves considerably
21 more than visually inspecting soil cores. It is also a proposal that has not to date been
22 accepted by MassDEP, and, indeed, is inconsistent with “monitoring well gauging”
23 approaches advocated by the United States EPA, the American Petroleum Institute, and
24 every regulatory agency that I am aware of.

1 **Q. In paragraph 127 of his rebuttal testimony, Mr. Decoulos asserts his**
2 **justification for his evaluation of the risks posed by benzene in the indoor air of the**
3 **site building. Does his testimony influence your opinion?**

4 A. No.

5 On page 50 of his Rebuttal Testimony, in paragraph 127, lines 7 and 8, Mr.
6 Decoulos states “Page 19 of the RAO documentation stated that the EPCs for
7 groundwater were calculated ‘at each individual monitoring point.’” This is incorrect.
8 On the top of page 19 of the RAO documentation, the complete statement is “Exposure
9 point concentrations for groundwater under Method 1 or Method 2 Risk
10 Characterizations are defined as the concentration of contaminants detected at each
11 individual monitoring point”. This statement is correct. Unfortunately, Mr. Decoulos
12 did not calculate Exposure Point Concentrations at each individual monitoring point. He
13 provided no table of site contaminants and their calculated Exposure Point
14 Concentrations. In fact, he never even used the term “Exposure Point Concentration” in
15 any table or in any discussion of site data.

16 He did provide the “Average GW Result” for site contaminants in Table 4 of the
17 RAO report, including an average value of benzene of 1877 µg/L, just below its GW-2
18 standard of 2000 µg/L. And since there were no further discussions of benzene as a
19 vapor intrusion concern, I can only assume that Mr. Decoulos believed that MCP
20 groundwater EPCs were calculated as an average value, similar to soil EPCs, which is not
21 the case. Admittedly, this is only an educated guess, but the need to resort to such
22 measures is in itself an indictment of the lack of clarity and detail in the RAO report.

1 In his Rebuttal Testimony, Mr. Decoulos then goes on to explain why the data
2 from monitoring well DMW-1 (in which benzene concentrations exceeded the GW-2
3 standard) are not as relevant as data from DMW-4, which was closer to the building, and
4 which had benzene concentrations less than its GW-2 standard. While some of his
5 rationale has some merit in evaluating the benzene issue, it is not, in my opinion,
6 sufficiently conclusive, in light of the other site assessment deficiencies. Moreover,
7 none of this rationale was included in the RAO report.

8 **Q. Does this conclude your testimony?**

9 A. Yes.

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