COMMONWEALTH OF MASSACHUSETTS

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

In the Matter of:	)	
	)	
James J. Decoulos,	)	
The Respondent	)	
	)	Docket No.:
	)	Complaint No. 05C-07

PROPOSED
ORDER FINDING SUFFICIENT GROUNDS FOR DISCIPLINE AND NOTICE OF NONCOMPLIANCE

INTRODUCTION

1. The Board of Registration of Hazardous Waste Site Cleanup Professionals ("Board") finds, for the reasons stated herein, that sufficient grounds exist to take disciplinary action against James J. Decoulos. The form of discipline or other disposition will be determined in the next stage of this proceeding pursuant to 309 CMR 7.10(3).

2. The Board's finding that sufficient grounds exist to take disciplinary action has been made as a result of an investigation that resulted in a determination by the Board that James J. Decoulos, while providing Professional Services as a Hazardous Waste Site Cleanup Professional (a/k/a "Licensed Site Professional" or "LSP"), violated the following Board Rules of Professional Conduct:

   309 CMR 4.02 (1) for failure to act with reasonable care and diligence; and
   309 CMR 4.03(3)(b) for failure to follow the requirements and procedures of M.G.L. c. 21E and 310 CMR 40.0000 (the Massachusetts Contingency Plan ("MCP")).

JURISDICTION

3. The Board is authorized to issue this Order pursuant to the provisions of M.G.L. c. 21A, §§ 19C and 19F.

PARTIES

4. The Board is a duly authorized administrative agency of the Commonwealth of Massachusetts acting pursuant to the provisions of M.G.L. c.21A, §§ 19-19J.

5. James J. Decoulos ("the Respondent") is an individual licensed by the Board as a Hazardous Waste Site Cleanup Professional.

REQUIREMENTS OF LAW

6. In providing Professional Services, a licensed site professional shall act with reasonable care and diligence, and apply the knowledge and skill ordinarily required of licensed site professionals in good standing practicing in the Commonwealth at the time services are performed. 309 CMR 4.02(1).

7. In providing professional services, a licensed site professional shall follow the requirements and procedures set forth in applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000. 309 CMR 4.03(3)(b).

FINDINGS OF FACT REGARDING 131 MAIN STREET, CARVER

8. The property at 131 Main Street, Carver, MA, is a gas station and auto repair business located on a .85-acre lot on a busy secondary highway in a rural residential area. The pump island is located between the site building and the road, and the entire area in front of the site building is paved.

9. The surrounding area includes residences and wetlands. South Meadow Brook flows beneath Main Street approximately 800 feet south of the property.

10. A two-bedroom apartment is located on the second floor of the on-site building. The property itself, an abutting residence and the residence directly across the street all have private drinking water wells. The boundary of an Interim Wellhead Protection Area for a public drinking water supply well intersects the site property. Thus the groundwater at the property is classified as GW-1.

11. Three gasoline tanks are located under the south end of the paved area between the building and Main Street and a diesel tank is located under the north end of that area. At the time the diesel fuel release was reported, the fill ports for all of the tanks, including the diesel tank, were located above the gasoline tanks. Fuel was delivered to the diesel tank via a remote fill line.

12. An LSP for the prior owner was independently investigating a past gasoline release that remained the responsibility of the prior owner.

13. In January 2003, the prior owner's LSP found light non-aqueous phase liquid ("LNAPL") identified as diesel fuel in monitoring well BP-5RR located between the gasoline pumps and Main Street.

14. The current owner engaged the Respondent to respond to the release of diesel fuel. On January 21, 2003, the Respondent notified the Massachusetts Department of Environmental Protection ("DEP" or "MassDEP") of the diesel fuel release.

15. On January 27, 2003, the Respondent orally proposed an Immediate Response Action (IRA) to install a large recovery well, sample private wells, inspect the storm drains, and perform tightness tests on the underground storage tanks ("USTs"). MassDEP orally approved an IRA Plan that included inspecting the stormwater system for potential impacts, as well as private well sampling, indoor air monitoring, and tank tightness testing. MassDEP assigned Release Tracking Number (RTN) 4-17582.

16. The underground tanks passed tightness tests performed in January 2003. A subsequent test revealed that the remote fill line for the diesel tank was broken and leaked fuel when deliveries were made.

17. MassDEP issued a Notice of Responsibility (NOR) to the current owner dated February 12, 2003 that required submittal of a written IRA Plan to include, among other tasks, a proposal to include an active remediation system to address historical and/or recurring accumulation of LNAPL.

18. The Respondent's written IRA Plan dated March 2003 proposed, among other things, to evacuate LNAPL from the monitoring well, and, if it returned, to install a 12-inch recovery well and an active LNAPL recovery system.

19. The Respondent performed the LNAPL evacuation in April 2003. Although the LNAPL returned within a few days, the Respondent did not install the 12-inch recovery well as proposed, but instead continued to hand bail LNAPL from the affected 1-inch micro well.

20. On May 16, 2003, five months after the discovery of LNAPL, the Respondent discovered a sheen on South Meadow Brook where it passes beneath Main Street. The Respondent notified MassDEP. Representatives of DEP and the Town came to the site the same day and with the Respondent traced the sheen upstream to the outfall of the storm water drainpipe that passes in front of the site of the diesel release. MassDEP assigned RTN 4-17852 for the release to the brook.

21. A MassDEP Release Log Form Attachment stated that an inspection of stormwater catch basins and manholes within Main Street by DEP personnel was conducted on May 16, 2003. DEP's form states that the Highway Department removed catch basin covers, and an oil sheen and vapors were noted. The form states that the catchbasin upgradient of the gas station was "clean," but the one

next to the gas station had diesel fuel odor and a sheen on the storm water, and "It was determined that a diesel fuel release was occurring."

22. DEP and the Respondent conducted screening of the air in the manholes for the storm drain pipe. Concentrations of total volatile organic compounds ranged from 0 parts per million ("ppm") in the manhole upgradient from the gas station and 0.5 ppm in the manhole in front of the station to a high reading of 28 ppm in a manhole downgradient from the gas station.

23. At the site visit on May 16, 2003, MassDEP issued a Field Notice of Responsibility that instructed the property owner to eliminate the source from leaking diesel fuel UST, initiate active collection of LNAPL from monitoring well BP-5RR, and "construct remedial system as necessary to stop the diesel fuel discharge to storm drain."

24. MassDEP also issued a formal NOR dated June 13, 2003, that stated that observations and air sampling in the manholes indicated that a release of diesel fuel was occurring at 131 Main Street.

25. MassDEP's formal NOR required the owner to submit a written IRA Plan that must include the tasks required by the Field NOR, e.g., the active collection of LNAPL and a remedial system as necessary to stop the diesel fuel discharge to the storm drain.

26. The Respondent submitted an IRA Status Report dated July 3, 2003 for the LNAPL release that also discussed the release to the brook and stated "water emanating from the outfall appeared to be impacted from either diesel fuel or home heating oil."

27. The July 2003 IRA Status Report included a table of test results from soil and groundwater sampling performed in June 2003. Samples from new wells along the exterior of the stormwater drain pipe detected diesel-range hydrocarbons and related contaminants (extractable petroleum hydrocarbon (EPH) and polycyclic aromatic hydrocarbons (PAH analytes)) exceeding Method 1 cleanup standards in soil and groundwater.

28. The table of groundwater sampling results in the July 2003 report also included analytical results from surface water samples collected at the outfall to the brook, where the total concentration of Extractable Petroleum Hydrocarbon (EPH) fractions exceeded 3,000,000 parts per billion, but the text of the report did not discuss these results or their significance.

29. The Respondent's July 3, 2003 IRA Status Report stated, "it is clear from the recent investigations that the diesel fuel delivery line has not caused the impact to the stormwater system."

30. DEP issued a Notice of Noncompliance (NON) to the site owner on November 26, 2003, for failure to submit a Release Notification Form (RNF) or an IRA Plan for the release to the brook (RTN 4-17852).

31. In January 2004, the Respondent submitted an IRA Plan for the release to the brook that stated that the water emanating from the outfall appeared to be impacted by either diesel fuel or home heating oil.

32. The Respondent's January 2004 IRA Plan also asserted there was "an apparent lack of connection" between the sheen at the outfall and the gas station, and asserted that the groundwater analytical results "show that the diesel delivery line failure has not migrated along a potentially preferred pathway outside the stormwater piping in Main Street."

33. The Respondent's January 2004 IRA Plan also stated that the outfall area was impacted with oil generated from stormwater surface flows from the gas station. To address these surface flows, the plan proposed to reconstruct the gas station concrete pad, install an overhead canopy and oil/water separator, and coordinate with the Town to clean the storm drain system.

34. MassDEP representatives visited 131 Main Street and the outfall area with the Respondent on March 11, 2004, and recorded "gross contamination of wetlands, banks of brook, and surface water at outfall" in their Release Log. They also photographed conditions at the outfall during the March 11, 2004 visit.

35. MassDEP issued a Request for IRA Plan Modification dated April 5, 2004, that described the contamination DEP had observed and photographed as "separate-phase oil, including oil/water emulsions" on the brook surface and "significant oil staining" on the banks and in adjacent wetland areas.

36. The Request for IRA Plan Modification stated that DEP had determined that the IRA Plan dated January 21, 2004 was "not sufficient to prevent additional impact to South Meadow Brook." The Request stated that one or more conditions of Substantial Release Migration existed at the Site and the Plan did not adequately address them.

37. The Request for IRA Plan Modification stated that the January 2004 IRA Plan did not provide sufficient information to support the Respondent's assertions that the impact to the brook was caused solely by surface water runoff from the gasoline station and was not contributed to by an ongoing subsurface release at the site.

38. DEP's April 2004 Request for IRA Plan Modification required a plan to mitigate the condition of Substantial Release Migration relative to the impacts to the surface water at South Meadow Brook, a plan to perform an Imminent Hazard Evaluation and a plan to eliminate or mitigate Critical Exposure Pathways, as required by 310 CMR 40.0412(3), 40.0426 and 40.0414(3).

39. The Request for IRA Plan Modification also required sufficient assessment to determine whether groundwater infiltration into the storm drainage system was a source of oil contamination.

40. The Respondent submitted an IRA Plan Modification dated April 21, 2004, which included a proposal for each of MassDEP's requirements and also proposed to conduct forensic geochemistry assessment of water, sediment, and soil data; future development of remedial plans to eliminate stormwater contamination of the brook; and video inspection of the stormwater system.

41. The Respondent did not perform an Imminent Hazard evaluation until his December 2004 IRA Plan Modification, and never performed the additional tasks he had proposed in April 2004, described above in paragraph 40.

42. The Respondent submitted a Phase I report for the diesel fuel release dated April 30, 2004, with only one set of soil and groundwater data and groundwater elevations that he had obtained in June 2003.

43. The Phase I report did not include an Imminent Hazard Evaluation.

44. The Phase I report stated that volatile organic compounds could migrate through soil and intercept the storm drain pipe, and that petroleum-contaminated groundwater could infiltrate into the stormwater collection system, which would be a direct pathway to South Meadow Brook. The Respondent stated in the report that "subsurface investigations and sampling to date show that this route has not developed."

45. The Phase I report identified surface water runoff to the catch basin as a source of petroleum contamination of the brook. The Phase I report concluded that the release to the brook "appears historic, with many potential sources contributing to significant cumulative depositions within the Main Street stormwater collection system," and it asserted that the subsurface investigation showed that contaminated groundwater had not infiltrated the stormwater collection system

46. On May 20, 2004 MassDEP provided comments via e-mail to the Respondent regarding his April 2004 IRA Modification and included requirements and recommendations to: collect sediment samples from impacted catch basins for inspection and/or analysis prior to the video survey of the storm drainage system; provide a site plan that accurately depicts all monitoring well locations, groundwater contours, and the extent of the contaminant plume; and a cross-section plan showing the storm drain system.

47. On May 26, 2004, the Respondent submitted an IRA Plan Modification that included proposals to perform the response actions requested by MassDEP's May 20 email.

48. Respondent never documented the collection or testing of sediment samples from the catch basin, never undertook a video survey of the storm drainage system, and did not submit the required cross-section until January 7, 2005 with an IRA Plan Modification dated December 22, 2004.

49. In June 2004 the Respondent sampled groundwater for the first time since June 2003. LNAPL was detected for the first time in monitoring well DCW-1, and continued to be present in well BP-5RR. The DCW-1 well was located immediately adjacent to the storm drain pipe, downgradient from BP-5RR.

50. The Respondent submitted an IRA Status Report and Modification on June 15, 2004. Based upon the discovery of LNAPL in a second monitoring well, the Respondent proposed to accelerate the recovery of LNAPL by installing a 50-foot interceptor trench immediately adjacent to the storm pipe, with a 12-inch recovery well fitted with a passive LNAPL skimmer, which would be fed by two wings of panel piping.

51. MassDEP issued a Denial of the IRA Plan Modification on July 7, 2004, which stated that the extent of LNAPL had not been fully delineated and the IRA Plan Modification did not provide information to support his contention that the passive recovery system would be effective, and the extent of LNAPL had not been fully delineated.

52. MassDEP's July 7, 2004 Denial also stated that the proposed interceptor trench may exacerbate the release conditions, because it did not include either an impervious barrier on the downgradient side to prevent offsite migration or an active pumping and recovery component to provide hydraulic control.

53. The July 7, 2004 Denial also stated that the hand bailing had not controlled the migration of LNAPL, as evidenced by the discovery of LNAPL in a second monitoring well.

54. DEP stated that the proposed plan did not address the condition of Substantial Release Migration. DEP also stated that in May 2003 they had required that an active LNAPL and groundwater recovery and treatment system be installed to provide hydraulic control to mitigate the SRM condition and the migration of LNAPL; however, such a system had not been implemented.

55. MassDEP requested a revised IRA Plan Modification within 30 days to address the deficiencies outlined in the denial letter and to provide an active LNAPL and groundwater recovery system.

56. The Respondent submitted an IRA Status Report and Modification Plan dated November 5, 2004, which provided the June 2004 groundwater sampling results and stated, "The results continue to show that the diesel release is not migrating

along a preferential pathway outside the 15 inch reinforced concrete stormwater drain pipe along Main Street," even though he had previously reported that NAPL had been discovered in well DCW-1, immediately adjacent to the storm drain pipe.

57. The November 2004 IRA Status Report also stated that Respondent had installed additional monitoring wells at the Site and that a passive LNAPL recovery canister was placed in one of the 4-inch wells. Hand bailing of LNAPL had resumed on October 7, 2004, after having been stopped in May 2004.

58. The November 5, 2004 Status Report and Modification Plan acknowledged that passive recovery was "not sufficient, by itself, to address the probable migration of LNAPL and dissolved constituents underneath the Main Street surface." The Plan proposed to pump groundwater from one of the four-inch wells "at a rate sufficient to pull LNAPL and dissolved diesel constituents back" to the site. A second four-inch well would be fitted with a passive skimmer. The Respondent proposed that once LNAPL was adequately removed, a chemical oxidant would be introduced to the subsurface.

59. MassDEP issued a Denial of the IRA Plan Modification on November 26, 2004, stating that the Respondent did not provide sufficient technical information to support the efficacy of the proposed treatment system; that the installation of the passive skimmer without prior approval from DEP violated the MCP (310 CMR 40.0420); and that the proposal to inject oxidants violated the MCP's specific prohibition on injection of remedial additives within 100 feet of a private water supply well in 310 CMR 40.0046(3).

60. DEP held a meeting with the Respondent on December 2, 2004, in which DEP identified deficiencies in the response actions and required future steps to be taken, including, among other things, a requirement to delineate the extent of LNAPL to the northeast, and to prepare an Imminent Hazard Evaluation and two cross-section plans perpendicular to the stormwater pipe.

61. On December 6, 2004, the Respondent notified MassDEP that he had received a road opening permit from the town relative to the proposed trench layout in the IRA Plan dated June 15, 2004.

62. On December 15, 2004 at 4:30 PM, email from MassDEP to the Respondent stated "Please be advised that the Department will not grant approval to the proposed IRA at the Site at this time. To date, the Department has not received information of sufficient detail regarding the nature and extent of any proposed IRA activities at the Site." On the same day at 4:47 PM, email from the Respondent to MassDEP specified the proposed sequence of construction actions for December 16, 2004, i.e. the following day.

63. The Respondent submitted an IRA Plan Modification dated December 22, 2004 that stated that through a series of emails and telephone communications between the Respondent and MassDEP representative, the LNAPL interceptor trench was conditionally approved for construction. The December 22 IRA Modification described the construction of the trench on December 16 and 17, 2004, and stated that due to a collapse during the excavation, the impermeable barrier could not be placed properly on the downgradient wall of the trench and not all of the proposed perforated PVC piping could be installed. The submittal included two cross-sections that showed the locations of the stormwater pipe, catch basin invert, USTs, and interceptor trench relative to groundwater elevations measured 18 months earlier in June 2003.

64. The December 22, 2004 IRA Plan Modification also proposed the ten tasks MassDEP had required in its denial of the previous plan, and included the Respondent's first Imminent Hazard Evaluation and evaluation of Substantial Release Migration.

65. The Respondent's December 22, 2004 IRA Plan Modification asserted that all evidence collected to date demonstrated that the petroleum impacts to the brook were caused by surface runoff from Main Street entering the catch basin. The Respondent again asserted in this submittal that the subsurface investigation showed that contaminated groundwater had not infiltrated the stormwater collection system.

66. For LNAPL recovery, the Respondent's December 2004 IRA Plan Modification proposed the installation of passive skimmers in three of the four 4-inch wells previously installed and the pumping of LNAPL and groundwater from the interceptor trench to a separation tank.

67. The Respondent's field notes indicate that the Respondent did not measure the depths to the stormwater pipe inverts until December 10, 2004. Respondent did not discuss or record the elevations of the pipe inverts in any submittal to MassDEP. The Respondent's December 22, 2004 IRA Plan Modification did not discuss the cross-sections and only mentioned them in reference to the location of the trench.

68. The Respondent submitted an IRA Status Report May 6, 2005, which stated that he had observed a sheen on the water in the manhole located in front of the gas station. Analyses of the water indicated low concentrations of gasoline and diesel compounds. The report stated this was "a likely indication of underground gasoline migration contaminating the storm drain system in addition to the known diesel contamination," and acknowledged that "contaminant levels within the drain pipe may be affected by groundwater elevation." Thus the Respondent acknowledged that subsurface contamination could enter the storm drain pipe.

69. To assess the possibility that the diesel LNAPL was entering the storm drain pipe, the Respondent utilized groundwater elevations measured at the USGS monitoring well located in Lakeville, MA, two towns away from the site, on the two dates in April when he observed conditions within the storm pipe. On this basis the Respondent "estimated" that the storm drain system would only be impacted by contaminated groundwater when the depth to groundwater at the USGS station reached approximately 10.6 feet below ground surface.

70. The Respondent submitted an IRA Plan Modification dated July 8, 2005, which stated that a nine inch rise in elevation from the groundwater elevations measured 18 months earlier in June 2003 would intercept the drainpipe and thus pose the threat that petroleum constituents would migrate into the storm drain system. The Respondent again used the USGS groundwater data from two towns away and estimated that petroleum contamination entered the storm drain pipe for six weeks from April to June 2005. The Respondent never reported whether he had determined if this had actually happened based on site groundwater elevation data.

71. After the Respondent submitted the July 2005 Modification, the gas station owner hired a new LSP to replace the Respondent. The new LSP conducted groundwater monitoring and a video survey of the storm drain pipe and determined that LNAPL was likely in contact with the lower portion of the storm drain pipe in the vicinity of two of the monitoring wells the Respondent had used, and that groundwater was intruding into the pipe at the location where the LNAPL was in contact with the outer portion of the pipe.

72. In April 2007, MassDEP issued an Administrative Consent Order with Penalty (ACOP) to the gas station owner for failure to perform response actions in a timely manner. The ACOP cited the Notices of Noncompliance and requests for IRA Plan Modifications issued during the Respondent's tenure, particularly related to the inaction regarding the condition of Substantial Release Migration and exposure pathways involving the storm drain pipe and the brook, and the Department's continuing requests for an active LNAPL recovery system.

THE BOARD'S CONCLUSIONS REGARDING 131 MAIN STREET, CARVER

73. The Board concluded that the Respondent did not act with reasonable care and diligence in assessing the site at 131 Main Street in Carver Massachusetts, in violation of 309 CMR 4.02(1), because he did not perform sufficient assessment activities to rule out a connection between the diesel release and the contamination at the outfall or to support his assertions that surface runoff, and not the diesel release, caused the contamination at the outfall.

74. The Board found that the Respondent failed to implement MassDEP's repeated IRA requirements to delineate the extent of the LNAPL release, mitigate the

condition of Substantial Release Migration, conduct an Imminent Hazard Evaluation, and conduct active LNAPL recovery and a video survey of the storm drain system to address the condition of Substantial Release Migration.

75. The Board found that the Respondent placed passive skimmers in monitoring wells without MassDEP's approval.

76. The Board concluded that by not meeting the requirements for an Immediate Response Action, the Respondent did not follow the requirements and procedures set forth in applicable provisions of 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. The 633 North Main Street property is a triangular lot bordered on two sides by roads. It has been occupied by a gas station and auto repair shop since 1935.

78. In 1997, two Release Tracking Numbers were issued for releases of petroleum discovered during the removal of three USTs.

79. In a Phase I report filed in June 1998, a prior LSP concluded that soil and groundwater were contaminated with gasoline above MCP standards, and further investigation was needed to determine the extent of contamination.

80. The site owner retained the Respondent to perform response actions in or around May 2002.

81. On May 8, 2002, the Respondent drilled 11 micro borings and completed four of them as groundwater monitoring wells and soil gas wells. Soil samples from four borings were submitted for VPH analysis.

82. The Respondent collected groundwater samples from the four newly installed wells and existing well MW-3R on May 10, 2002 and had them analyzed for VPH.

83. Concentrations of VPH hydrocarbons and target analytes exceeded the Method 1 GW-2 cleanup standards in samples from two of the wells.

84. The Respondent measured the depth to groundwater on May 10, 2002 and determined that groundwater was flowing in a north/northwesterly direction across the site.

85. The Respondent collected a second round of groundwater samples on June 4, 2002, less than four weeks after the first sampling. In several instances the second

round analytical results were 2 to 3 times greater than the first round results. Several contaminants exceeded the Method 1 GW-2 and GW-3 standards.

86. The Respondent collected soil gas samples from the two soil gas sampling points on June 4, 2002 and had them analyzed for air-phase petroleum hydrocarbons (APH).

87. The Respondent did not determine the downgradient extent of groundwater contamination or whether contaminated groundwater was migrating off the western side of the property.

88. Using the two rounds of groundwater data, soil data from his borings and the prior consultant's borings, and the soil gas data, the Respondent submitted a Class A-3 RAO in June 2002, approximately six weeks after he started performing response actions at the site.

89. The Respondent utilized a combined Method 1 and Method 2 Risk Characterization and concluded that a condition of No Significant Risk existed at the site.

90. In the Method 2 Risk Characterization, the Respondent inappropriately averaged divergent high and low soil gas test results from two separate locations to calculate soil gas Exposure Point Concentrations (EPCs) for certain petroleum compounds. One of the concentrations was more than 140 times higher than the other with which it was averaged. Thus the Respondent did not identify a conservative estimate of the Exposure Point Concentration of those compounds to conclude that there was no risk of exposure via indoor air, in violation of 310 CMR 40.0926(3) and 40.1003(1).

91. The Respondent failed to include MTBE in his risk calculations, although the concentrations of MTBE in groundwater exceeded the Method 1 cleanup standards for groundwater that might discharge contaminants to indoor air (GW-2) or surface water (GW-3). Thus the Respondent did not assess potential risks of human exposure to MTBE via indoor air or environmental exposure via surface water.

92. The Respondent did not assess the potential risk to indoor air from benzene, although benzene had a groundwater Exposure Point Concentration double the applicable Method 1 GW-2 standard.

93. The Respondent used two methods to calculate Method 2 GW-2 standards, but it was unclear how he derived the standards because he did not adequately describe the methods used or include his calculations, and he did not follow available guidance published by MassDEP.

94. The Respondent did not correctly calculate the concentration of groundwater contaminants at the discharge point to the surface water, and as a result, he did not appropriately determine that a condition of 'no significant risk' existed at the site.

95. MassDEP issued a Notice of Noncompliance (NON) on November 6, 2003, stating that the Respondent's RAO submittal was not valid.

96. The NON stated that the RAO violated the MCP because sources of oil or hazardous materials had not been eliminated or controlled, in violation of 310 CMR 40.1003(5), and the Respondent failed to define adequately the horizontal and vertical extent of contamination, in violation of 310 CMR 40.0904(2).

97. The NON also stated that the RAO failed to identify conservative Exposure Point Concentrations because the Respondent averaged two divergent sets of soil and groundwater test data, in violation of 310 CMR 40.0926(3(b)(1).

98. The NON also stated that the RAO violated the MCP and failed to demonstrate that the site had achieved a level of No Significant Risk, in violation of 310 CMR 40.0973(7), because the two rounds of groundwater data were collected within four weeks of each other and showed increasing levels of petroleum hydrocarbons and associated compounds, some of which increased significantly in the second sampling. The NON stated that the two rounds of sampling only four weeks apart did not provide sufficient information about seasonal fluctuations of the water table and contaminant concentrations.

99. In the NON, MassDEP found that the Respondent's calculated Method 2 standards were inadequate to rule out vapor migration into buildings or discharge of contaminated groundwater to surface water. DEP required the site owner to resume response actions and perform additional site investigations.

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

100. The Board found that the LSP did not meet the standard of care because he did not demonstrate that a level of No Significant Risk existed or had been achieved, because the data showed increasing concentrations of petroleum contaminants on the site and in some cases was widely divergent, in violation of **309 CMR 4.02(1)**

101. The Board found that the Respondent used incorrect calculations and failed to follow available guidance published by MassDEP and thus did not perform the Method 2 Risk Characterization for the site in a manner consistent with scientifically acceptable risk assessment practices in violation of 310 CMR 40.0901(4).

102. The Board concluded that that the Respondent did not adequately define the horizontal and vertical extent of contamination at the Randolph site in violation of 310 CMR 40.0904(2).

103. The Board concluded that by averaging widely divergent analytical results, the Respondent did not identify a conservative estimate of contaminant concentrations to which receptors may be exposed, in violation of 310 CMR 40.0926(3)(b)(1).

104. The Board concluded that the Respondent filed the RAO without achieving a condition of No Significant Risk of harm to health, public welfare or the environment, in violation of 310 CMR 40.0973(7) and 310 CMR 40.1003(1).

105. The Board concluded that submitting the RAO when data showed increasing concentrations of petroleum contaminants in groundwater, the LSP did not meet the general provisions of Response Action Outcomes by not showing that the source of contamination was eliminated or controlled, in violation of 310 CMR 40.1003(5).

106. The Board concluded that by not meeting the MCP requirements for a Response Action Outcome and Risk Characterization, the Respondent did not follow the requirements and procedures set forth in applicable provisions of G.L. c. 21E and 310 CMR 40.0000, in violation of **309 CMR 4.03(3)(b).**

FINDINGS OF NONCOMPLIANCE

I. The Respondent failed to comply with the Board's Rule of Professional Conduct 309 CMR 4.02(1) by failing to act with reasonable care and diligence and apply the knowledge and skill ordinarily exercised by Licensed Site Professionals in regard to the two disposal sites outlined above.

II. The Respondent failed to comply with the Board's Rule of Professional Conduct 309 CMR 4.03(3)(b) by failing to follow the requirements and procedures set forth in applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000.

Because of the nature of these violations, unless the Respondent complies with the following Order, the Board is not persuaded that the Respondent will be in compliance routinely and on a continuing basis with all standards and requirements of the MCP or the Board's own regulations. See M.G.L. c.21A, § 19C.

ORDERED

Upon consideration of the above Facts and Findings of Noncompliance, it is ORDERED and ADJUDGED that:

I. Sufficient grounds exist for the Board to take disciplinary action or other disposition against the Respondent, as described in 309 CMR 7.02.

II. The Respondent not repeat violations of the Board's Rules of Professional Conduct requiring the Respondent to:

(a) act with reasonable care and diligence, and otherwise act in accordance with 309 CMR 4.02(1);

(b) follow the requirements and procedures of M.G.L. c. 21E and 310 CMR 40.0000, in accordance with 309 CMR 4.03(3)(b); and

(c) disclose and explain in waste site cleanup activity opinion the material facts, data, other information, and qualifications and limitations known by him or her which may tend to support or lead to a waste site cleanup activity opinion contrary to, or significan6tly different from, the one expressed, in accordance with 309 CMR 4.03(3)(d).

Failure to comply with this Order may subject the Respondent to further action, including, but not limited to, further disciplinary action by the Board, the issuance of a civil administrative penalty, or referral to the Massachusetts Attorney General's Office for additional civil action and/or criminal prosecution.

RIGHT TO APPEAL

Any person aggrieved by a final decision of the Board in an adjudicatory proceeding may obtain judicial review by filing a complaint with the appropriate court in accordance with M.G.L. c. 30A.

EFFECTIVE DATES AND PARTIES BOUND

This Order remains effective unless modified by the Board. Issuance of this Order and Notice of Noncompliance shall not preclude, and shall not be deemed an election to forego, any action to recover damages to interests of the Commonwealth or for civil or criminal fines or penalties.

Signed this 8th day of January, 2010.

The Board of Registration of Hazardous Waste Site Cleanup Professionals
By:

_____
Janine Commerford, Chair