

**COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION OF  
HAZARDOUS WASTE SITE PROFESSIONALS**

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In the Matter of:

The Respondent LSP in Complaint 05C-07

Respondent  
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) Docket No. LSP-10AP-01  
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**APPOINTMENT OF PRESIDING OFFICER  
AND  
INSTRUCTIONS FOR CONDUCTING ADJUDICATORY PROCEEDING**

WHEREAS, the Board of Registration of Hazardous Waste Site Cleanup Professionals ("Board") has issued an Order to Show Cause to the Respondent in Complaint 05C-07 directing him/her to show cause why the Board should not find that sufficient grounds exist to take disciplinary action against him/her based on the attached Proposed Order Finding Sufficient Grounds for Discipline; and

WHEREAS, the Respondent LSP filed an Answer to the Proposed Order within 21 days of receiving the Order to Show Cause, and in the Answer contested findings of fact and/or rulings of law set forth in the Proposed Order and requested an adjudicatory proceeding, the Board is appointing a Presiding Officer to conduct said proceeding; and

THEREFORE, the Board hereby appoints the Presiding Officer named below and provides the following instructions for conducting the adjudicatory proceeding:

1. **Appointment of Presiding Officer.** The Board hereby appoints MassDEP's Office of Appeals and Dispute Resolution to appoint an attorney in that group to be the Presiding Officer in this matter.
2. **Procedure Generally.** The conduct of the formal adjudicatory proceeding shall be governed by the Board's regulations at 309 CMR 7.08 and by the Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.00 *et seq.*

Appointment of Presiding Officer and Instructions for Conducting Adjudicatory Proceeding

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3. **Purpose of the Adjudicatory Proceeding.** The adjudicatory proceeding shall serve to finalize the Board's investigation of the facts and grounds for discipline. At the conclusion of the adjudicatory proceeding, in accordance with the provisions of 801 CMR 1.00 *et seq.*, the Presiding Officer shall file a recommended decision with the Board and promptly provide the parties with a copy. The recommended decision shall contain the Presiding Officer's recommended findings of fact and rulings of law concerning the charges set forth in the Order to Show Cause. Pursuant to 309 CMR 7.08(1), it shall not be the role of the Presiding Officer to recommend the form of discipline or other disposition to be taken by the Board.

4. **Independence of the Presiding Officer.** The Presiding Officer shall conduct the adjudicatory proceeding, and prepare recommended findings of fact and rulings of law, by exercising his independent judgment impartially and without bias or prejudice.

5. **Ex Parte Communications.** Except as permitted below, the Presiding Officer shall not initiate, permit or consider any ex parte communication with respect to the merits of this proceeding, prior to its final conclusion.

- (a) Where circumstances require, an ex parte communication is authorized when it does not deal with substantive matters and is for scheduling, administrative purposes, or emergencies, provided (i) the Presiding Officer reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) the Presiding Officer makes provisions promptly to notify all other parties of the substance of the ex parte communication and allows them an opportunity to respond.
- (b) The Presiding Officer may consult with the Board's General Counsel with respect to questions of process, procedure, timing, scheduling, hearing room location, recording equipment, status reports, and other administrative matters, but not with respect to the merits of the proceeding.

6. **Expected Timeline for Proceeding.** In adopting LSP Board Policy #2007-01 in May 2007, the Board made a commitment to process disciplinary Complaints but to adjudicatory proceedings as well. Pursuant to this Policy, the Board established the following timeline goals for adjudicatory proceedings:

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|---|-----------------------|
| (a) from Board decision to issue OTSC to service of OTSC    | 30 days               |
| (b) from service of OTSC to receipt of LSP's Answer         | 21 days               |
| (c) from receipt of LSP's Answer to commencement of hearing | 180 days <sup>1</sup> |
| (d) from commencement to conclusion <sup>2</sup> of hearing | 90 days               |

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<sup>1</sup> This 180-day period includes an opportunity for an expanded, MassDEP-style prehearing process.

(e) from conclusion of hearing to recommended decision

60 days

The Board hereby requests that the Presiding Officer take all reasonable steps to attempt to comply with this timeline, but the timeline is not mandatory. Policy #2007-01 states: "The policy is adopted solely for internal management purposes and does not create any right or entitlement for parties bringing Complaints or parties who are the subject of Complaints, or any other party."

Board of Registration of Hazardous Waste  
Site Cleanup Professionals

Date: 2/12/2010

By: Debra L. Stake  
Debra Stake  
Co-Chair of the Board's Professional  
Conduct Subcommittee

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<sup>2</sup> I.e., closing of the record after final briefs have been submitted.