

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

In the Matter of:)
)
)

James J. Decoulos,
Respondent)
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_____)

Docket No.: LSP-10AP-01

**AFFIDAVIT OF JAMES J. DECOULOS IN SUPPORT
OF RESPONDENT'S MOTION TO CORRECT, AMEND OR MODIFY
THE REPORT AND ORDER DATED OCTOBER 27, 2010**

My name is James J. Decoulos and the following facts are true to the best of my knowledge, information and belief.

1. I participated in a hearing in this matter via teleconference on October 27, 2010 at 10:30 a.m (the "Hearing"). The other participants in the Hearing were Lynn Peterson Read, representing the Board of Registration of Hazardous Waste Site Cleanup Professionals (the "Board") and Presiding Officer Timothy M. Jones.
2. Presiding Officer Jones stated in the Hearing that he has not yet read any of the testimonies in this matter.
3. On August 4, 2010, the Board responded to a Request for Production of Documents I propounded. The Request was made within the timelines established for discovery in this matter. See attached Exhibit B of my affidavit dated October 1, 2010 at http://decoulos.com/lsp_complaint/Decoulos_Aff2_100110.pdf

4. The August 4th response from the Board immediately stated the following:

General Objection A: The Board objects to any Document Request that requests that the LSP Board produce documents in MassDEP's possession, custody or control or in the possession, custody or control of any designated MassDEP employee. The LSP Board is a separate agency from MassDEP and has no control over any documents in the possession, custody or control of MassDEP or any MassDEP employee.

5. As a result of the Board's refusal to produce relevant documents from MassDEP in this matter, I have been forced to submit public record requests to MassDEP employees pursuant to the Massachusetts Public Records Law, G. L. c. 66, § 10, and the Public Records Access Regulations, 950 CMR 32.00, *et seq.*

6. I informed Presiding Officer Jones at the Hearing that I will file a complaint in Middlesex Superior Court if MassDEP continues to be unresponsive to my Public Records Requests.

7. I left a voice message with Litigation Manager Michael Dingle from the MassDEP Office of General Counsel this morning explaining the unresponsiveness of my Public Record Requests on MassDEP employees and my intent to file a complaint in Middlesex Superior Court.

8. I informed Presiding Officer Jones at the Hearing that I was unsatisfied with my public records review at the Southeast Regional Office on October 19, 2010 and that it was my belief that there were additional documents from MassDEP that were not being made available for my review.

9. My records request to the Southeast Regional Office was to review "[A]ll email communications, telephone notes or meeting notes by or between DEP representatives Cynthia Baran and Jonathan Hobill regarding the Eagle Gas Site at 131 Main Street in Carver."

10. I informed Presiding Officer Jones at the Hearing that I was pursuing a claim against my professional liability insurance company, the Hudson Insurance Group (Hudson), for failing to defend me in this matter.

11. I informed Presiding Officer Jones at the Hearing that I would prefer to be represented by counsel.

12. Attorneys Geoffrey Coan and Kevin Mannix from the firm of Wilson Elser Moskowitz Edelman & Dicker LLP were assigned to represent me by Hudson to address the civil action in Plymouth Superior Court and the initial complaint that Eagle Gas, Inc. filed with the Board in 2005. *See* Exhibit RR-15.

13. My “belief that the complaint could be withdrawn in the absence of supporting authority or assurances from the Board” was based upon advice and recommendations from Messrs. Coan and Mannix. *See* the Ruling and Order dated October 19, 2010 at page 4.

14. I have filed a complaint with the Massachusetts Division of Insurance regarding my insurance company’s failure to defend me in this matter and intend on pursuing the issue in Middlesex Superior Court if necessary.

Signed under the pains and penalties of perjury this 29th day of October, 2010.

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

James J. Decoulos