

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	)	Docket No.: LSP-10AP-01
	)	

**MOTION TO STRIKE THE TESTIMONY  
OF CYNTHIA A. BARAN AND JOHN FITZGERALD**

Now comes the Respondent James J. Decoulos who hereby moves to strike all the testimony and rebuttal testimony filed by Cynthia A. Baran and John Fitzgerald in this proceeding for their failure to comply with the Massachusetts Public Records Law, G. L. c. 66, § 10, and the Public Records Access Regulations, 950 CMR 32.00 *et seq.* In support of this motion, Respondent has prepared an affidavit this date to support the allegations (the “Decoulos Aff. #4”).

The Public Records Law expresses the Legislature's mandate that "[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner," Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 158 (1979), and that "[g]reater access to information about the actions of public officers and institutions is increasingly . . . an essential ingredient of public confidence in government," New Bedford Standard Times Publ. Co., v. Clerk of the Third Dist. Ct. of Bristol, 377 Mass. 404, 417 (1979).

In the current matter, Respondent has been seeking numerous documents from the Massachusetts Department of Environmental Protection (the “Department” or “MassDEP”) to determine whether his own actions were arbitrary or capricious. The Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”) has frustrated Respondent by

denying access to public documents and claiming that the Department is a “separate agency” and not under its control.

The two agencies are both charged by the Legislature to oversee compliance for G.L. c. 21E. They operate under the same roof, share similar office spaces, use common office equipment and operate under the same budget. It is clear that the Board operates under a budgetary line item of the Department and is subject to their control. *See* ¶¶ 46 – 50 of Decoulos Aff. #1 dated September 29, 2010; ¶¶ 1 – 3 of Decoulos Aff. #2 dated October 1, 2010; and ¶ 6 and Exhibit B of Decoulos Aff. #3 dated October 8, 2010.

Ms. Baran has failed to provide important public communications between herself and her supervisor Jonathan Hobill. Mr. Fitzgerald has failed to provide critical information on the recovery of Light Non-Aqueous Phase Liquids. All the information is necessary for Respondent to demonstrate how his proposed actions were presented with reasonable care and diligence. *See* attached Decoulos Aff. #4. Ms. Baran and Mr. Fitzgerald are obstructing justice in this matter by failing to fulfill their statutory duties as public servants. There is no excuse for the gridlock or the unnecessary harm on Respondent.

For the foregoing reasons, Respondent moves that the testimony and rebuttal testimony of Cynthia A. Baran and John Fitzgerald in this proceeding be completely struck.

Dated: October 15, 2010

Respectfully submitted,



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### STATEMENT OF SERVICE

I, James J. Decoulos, do hereby certify that I caused a copy of the MOTION TO STRIKE THE TESTIMONY OF CYNTHIA A. BARAN AND JOHN FITZGERALD with the supporting AFFIDAVIT OF JAMES J. DECOULOS AND EXHIBITS A and B dated October 15, 2010 to be served on the following parties by electronic mail:

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Signed under the penalties of perjury this 15<sup>th</sup> day of October, 2010.



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