

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 COMPEL PRODUCTION OF PUBLIC RECORDS

Now comes the Respondent, James J. Decoulos, who hereby moves that the Massachusetts Department of Environmental Protection (“MassDEP”) produce records that Respondent has sought for his defense in this matter under 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 motion (the “Decoulos Aff. #8”).

This proceeding derives from an Order to Show Cause issued to Respondent from the Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”) on January 8, 2010. On February 12, 2010, Debra Stake, the Co-Chair of the Board’s Professional Conduct Subcommittee executed an Appointment of Presiding Officer and Instructions for Conducting Adjudicatory Proceeding, allegedly on behalf of the Board. *See* <http://decoulos.com/LSPBoard10AP01.htm>

In the Appointment of Presiding Officer and Instructions for Conducting Adjudicatory Proceeding, it is stated that “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.”

The Office of Appeals and Dispute Resolution (“OADR”) is a division of MassDEP that is “responsible for receiving all adjudicatory appeals of the Department's permitting and enforcement decisions”. See <http://www.mass.gov/dep/service/oadrdes.htm> Both MassDEP and the Board are under the political and budgetary supervision of the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs. See G.L. c. 21A, §§ 1, 7, 8 and 19 *et seq.*

Respondent has been recently frustrated in seeking documents from two employees of MassDEP who are planning to testify for the Board in this action against Respondent. See Decoulos Aff. #8. The Board has argued that documents which Respondent seeks are not under its control and are managed by a separate agency of the Commonwealth - MassDEP.

If the Board has authority to appoint OADR to hear this matter, and it properly appointed OADR to conduct this adjudicatory proceeding pursuant to G.L. c. 21A, § 19H, it would appear that OADR has authority to compel employees of its own agency (MassDEP) to provide documents that Respondent deems necessary for a full and fair hearing. To allege that documents generated by public employees are exempt from public disclosure is an affront to the transparent duty that both the Board and MassDEP hold to protect public health, safety, welfare and the environment.

For the foregoing reasons, Respondent moves that the Presiding Officer of OADR in this matter order that MassDEP employee Cynthia Baran provide Respondent with the documents described in paragraphs 6 through 10 of Decoulos Aff. #8; and, that MassDEP employee John Fitzgerald provide Respondent with all the documents he sought on September 1, 2010, including the documents which are allegedly under the deliberate process exemptions of G.L. c. 4, § 7(26)(d) as described in Exhibit A of Decoulos Aff. #8.

Dated: November 10, 2010

Respectfully submitted,



James J. Decoulos *pro se*
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STATEMENT OF SERVICE

I, James J. Decoulos, do hereby certify that I caused a copy of the MOTION TO COMPEL PRODUCTION OF PUBLIC RECORDS and the supporting AFFIDAVIT OF JAMES J. DECOULOS dated November 10, 2010 to be served on the following parties by electronic mail:

Anne Hartley, Case Administrator OADR
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Signed under the penalties of perjury this 10th day of November, 2010.



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