

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
)	

RESPONDENT’S MOTION FOR ORDER COMPELLING DISCOVERY

Now comes the Respondent, James J. Decoulos, who hereby moves the Presiding Officer, in accordance with the provisions of 801 CMR 1.01(8)(i), to issue an order to the Petitioner, the Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”), to compel the Board to produce documents sought by the Respondent in various discovery and public records requests between July 28, 2010 and September 1, 2010.

Respondent further moves that the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) be compelled to produce documents and records sought by the Respondent 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 relies on the affidavit which accompanied his Motion to Seek Oral Testimony on September 29, 2010 (the “Decoulos Aff. #1”) and has also prepared an affidavit this date to document the discovery and public records requests (the “Decoulos Aff. #2”). The Decoulos Aff. #2 is attached to this Motion.

ARGUMENT

The documents and correspondence sought are important pieces of evidence that Respondent was unable to introduce prior to the deadline established for the Respondent to file Direct Testimony and Rebuttal Testimony (September 22, 2010). The deliberate actions of the Board and the Department to withhold this information has caused significant prejudice on the Respondent.

The suggestion by the Board that they are “a separate agency from MassDEP” is disingenuous and wily. *See* ¶¶ 46 – 50 of Decoulos Aff. #1 and ¶¶ 1 – 3 of Decoulos Aff. #2. 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. *See* Ciardi v. F. Hoffman-LaRoche, Ltd., 436 Mass. 53, 62 (2002) (“Statutes addressing the same subject matter clearly are to be construed harmoniously so as to give full effect to all of their provisions and give rise to a consistent body of law.”)

Respondent deems the discovery requests critical to the preparation for his cross-examination of the Board’s witnesses and the direct examination of hostile witnesses whom he has sought to be subpoenaed. Respondent expects the documents will shed considerable contradictory light on the position that the Board has attempted to portray Respondent’s work.

For instance, recent practice and standards on the mobility, recovery and remediation of Light Non-Aqueous Phase Liquids (or “LNAPLs”) completely support the proposed actions that Respondent sought at the Eagle Gas Site in 2004. Request Nos. 7 and 10 propounded on the Board on July 28th and September 1st; together with the public records request on John Fitzgerald on September 1st; are expected to clearly demonstrate how the Board and MassDEP are accepting these new standards of practice.

For the foregoing reasons, Respondent moves that this forum order that the Board and the Department produce forthwith all the documents sought by the Respondent as described in the Decoulos Aff. #2 in Exhibits A, C, D and F. Once the documents are received, Respondent further moves that this forum grant an opportunity for Respondent to file within seven days, Supplemental Direct Testimony, limited to the documents received under this motion.

Dated: October 1, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James J. Decoulos". The signature is fluid and cursive, with the first name "James" and last name "Decoulos" clearly distinguishable.

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 RESPONDENT'S MOTION FOR ORDER COMPELLING DISCOVERY with the supporting AFFIDAVIT OF JAMES J. DECOULOS AND EXHIBITS A – F dated October 1, 2010 to be served on the following parties by electronic mail:

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Signed under the penalties of perjury this 1st day of October, 2010.



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