

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 SEEK ORAL TESTIMONY

Now comes the Respondent James J. Decoulos who hereby moves the Presiding Officer, in accordance with the provisions of G.L. c. 30A, § 12 and 801 CMR 1.01(10)(g), to issue subpoenas to five individuals who Respondent deems necessary and relevant to testify on the facts and allegations presented in this forum to adequately present his defense. The five individuals are Thomas Potter, Mark Jablonski, Frederick Civian, Jonathan Hobill and Lynn Peterson Read.

Respondent moves that the five individuals be subpoenaed to testify at the Adjudicatory Hearing on October 27, 2010, with the possibility of appearing on October 29, 2010.

Pursuant to the requirements set forth in the Second Post Conference Report & Order dated July 22, 2010, Respondent has prepared an affidavit to support the allegations in this motion (the "Decoulos Aff."). As grounds for this motion, Respondent relies on the affidavit and makes the following detailed showing for each witness.

NECESSITY AND RELEVANCE OF TESTIMONY OF THOMAS POTTER

Mr. Potter conducted an audit site inspection of the Eagle Gas Site on August 19, 1998. *See* Exhibit RR-6. In his inspection report, he stated that "Mr. Nantais installed a drain pipe to

pump water from within the excavation – pipe existing today.” Mr. Potter needs to testify where that pipe was located and where the discharge from that pipe may have run.

Respondent would also like to question Mr. Potter on the storage and handling of oil and hazardous materials at the Eagle Gas Site during his site inspection and whether any consideration was given to the migration of contaminants along potentially preferential pathways.

It is likely that Mr. Potter wrote, or had a significant input in the preparation of the Notice of Audit Findings/Notice of Noncompliance/NON-SE-98-3A-42 dated December 8, 1998, which has been presented as Exhibit RR-7. Respondent needs to question a MassDEP employee who was involved with the Eagle Gas site during the 1998 time period on what actions were taken to evaluate the stormwater collection system for contamination, particularly since the 1998 NON required that a Tier I application be filed and that the public be properly involved in the remedial action process.

Mr. Potter’s business address is MassDEP Headquarters, One Winter Street, Boston, MA 02108; his telephone is: 617-292-5628; and his email address is: Thomas.Potter@state.ma.us

NECESSITY AND RELEVANCE OF TESTIMONY OF MARK JABLONSKI

Mr. Jablonski responded to the release of contamination at the stormwater outfall on May 16, 2003 as the representative of MassDEP. He is the only MassDEP employee who personally witnessed the oil contamination at the stormwater outfall at the time of discovery, visually observed the stormwater collection system at the time of discovery and screened various stormwater structures with a photo-ionization detector. He prepared the Release Log Form, the Release Log Form Attachment and the Field Notice of Responsibility which has been presented

by the Board of Registration of Hazardous Waste Site Cleanup Professionals (the “Board”) as Exhibits B-17, B-18 and B-19, respectively.

The testimony presented by the Petitioner and the Respondent are widely divergent on where the stormwater collection system was contaminated. *See* ¶¶ 8 - 23 of the Decoulos Aff. and Exhibit C. Mr. Jablonski’s testimony may provide substantial value to this forum in understanding the events of May 16, 2003.

Mr. Jablonski’s business address is MassDEP Southeast Regional Office, 20 Riverside Drive, Lakeville, MA 02347; his telephone is: 508-946-2819; and his email address is:

Mark.Jablonski@state.ma.us

NECESSITY AND RELEVANCE OF TESTIMONY OF FREDERICK CIVIAN

Mr. Civian is the lead stormwater coordinator at MassDEP and understands how easily oil spills can be carried by stormwater into regulated wetlands and waterways. He is the only MassDEP employee who understands the complexities of stormwater contamination and how they may interact with an LSP’s duties under G.L. c. 21A, §§ 19 – 19J and c. 21E. *See* ¶¶ 56 - 59 of the Decoulos Aff. and Exhibits G, H and I. He is also the Commonwealth’s stormwater Phase II coordinator who ensures compliance with EPA regulations and the Clean Water Act.

Mr. Civian can be expected to testify on the relevance of stormwater regulations to protecting the Commonwealth’s waterways and why the contamination at the stormwater outfall into South Meadow Brook would not be an unusual finding given the historic patterns of use at the Eagle Gas Site and the fact that the stormwater collection system is an EPA designated Urban Watershed. *See e.g.* Exhibits RR-19 through RR-29.

Mr. Civian’s business address is MassDEP Headquarters, One Winter Street, Boston, MA 02108; his telephone is: 617-292-5821; and his email address is: Frederick.Civian@state.ma.us

NECESSITY AND RELEVANCE OF TESTIMONY OF JONATHAN HOBILL

Mr. Hobill was the supervisor at MassDEP who approved all remedial actions at the Eagle Gas Site. Because he was the Regional Engineer responsible for issuing approvals and denials of various actions, his testimony is expected to be different, and with a higher level of understanding of engineering concepts, than his subordinate Cynthia A. Baran. *See e.g.* Exhibits B-35 through B-44. Ms. Baran holds a masters degree in epidemiology. *See* Exhibit B-2.

Mr. Hobill's business address is MassDEP Southeast Regional Office, 20 Riverside Drive, Lakeville, MA 02347; his telephone is: 508-946-2870; and his email address is:

Jonathan.Hobill@state.ma.us

NECESSITY AND RELEVANCE OF TESTIMONY OF LYNN PETERSON READ

Ms. Read was a member of the Complaint Review Team, made significant unsubstantiated allegations in the LSP Association Newsletter about Respondent and has personally visited the Eagle Gas Site. Her allegations have caused irreparable harm on Respondent without any factual support. *See* ¶¶ 2 - 45 of the Decoulos Aff. and Exhibits A, B and C.

Despite her appearance as counsel on behalf of the Board, she has acted as a public advocate in this proceeding, which is contrary to Rule 3.7 of the SJC's Rules of Professional Conduct. The Respondent is likely to suffer prejudice in the nature of this proceeding if he is unable to have Ms. Read respond to questions as a witness. Her appearance will not work a substantial hardship on the Board, as the Board has a General Counsel, Terry Wood, available to continue representation.

Ms. Read's contact information is contained in the Statement of Service.

For the foregoing reasons, Respondent James J. Decoulos moves that this forum issue subpoenas to Thomas Potter, Mark Jablonski, Frederick Civian, Jonathan Hobill and Lynn Peterson Read and require their appearance at the Adjudicatory Hearing on October 27, 2010, and possibly October 29, 2010, to testify on their knowledge of the disputed facts in this proceeding.

Dated: September 29, 2010

Respectfully submitted,

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

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 SEEK ORAL TESTIMONY with the supporting AFFIDAVIT OF JAMES J. DECOULOS AND EXHIBITS A through I dated September 29, 2010 to be served on the following parties by electronic mail:

Anne Hartley, Case Administrator OADR
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Lynn Peterson Read, Esq. BOARD
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Signed under the penalties of perjury this 29th day of September, 2010.



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