

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

In the Matter of: )  
 )  
James J. Decoulos, )  
Respondent )  
 )

Docket No. LSP 10AP 01

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

The Board of Registration of Hazardous Waste Site Cleanup Professionals ("Board") opposes Respondent's Motion to Strike Testimony of Cynthia A. Baran and John Fitzgerald.

Mr. Decoulos's Motion to Strike Testimony should be denied because the Board has no involvement in or control over MassDEP's response to Mr. Decoulos's requests to MassDEP for public records. The records that Mr. Decoulos seeks regarding the Eagle Gas site are maintained by a MassDEP employee who is the keeper of the records in Southeast Regional Office ("SERO"), and Mr. Decoulos acknowledges that he made his request for site records to this keeper of the records and that his communications have been with her and not Ms. Baran or the Board. Affidavit of James J. Decoulos in Support of Motion to Strike Testimony of Cynthia A. Baran and John Fitzgerald. Similarly, the records Mr. Decoulos seeks from Mr. Fitzgerald are maintained by MassDEP employees in the Northeast Regional Office. The Board is a separate agency from MassDEP and the Board is not participating in MassDEP's response to Mr. Decoulos's request for public records.

It is the Board's understanding that the keeper of the records at SERO has notified Mr. Decoulos that Mr. Decoulos has an appointment to review the records he has requested regarding the Eagle Gas site at SERO on Tuesday, October 19, 2010. See Attachment, E-mail from Irene Lavoie, Friday October 15, 2010. It is also the Board's understanding that MassDEP is will produce the records that Mr. Decoulos seeks regarding the LNAPL work group.

Moreover, Mr. Fitzgerald's testimony should not be stricken because his testimony is unrelated to the issues addressed by the LNAPL work group. Mr. Decoulos seeks the work group's records to support his opinions that active LNAPL recovery should not be pursued at the Eagle Gas site. However, Mr. Fitzgerald has testified only about Mr. Decoulos's Response Action Outcome statement for the Speedy Lube site. There is no relationship between Mr. Fitzgerald's testimony and the LNAPL work group records that Mr. Decoulos seeks from MassDEP, and thus there is no basis on which to strike Mr. Fitzgerald's testimony.

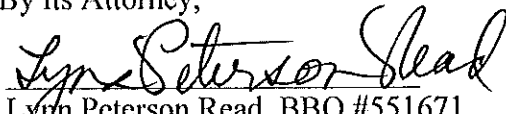
### CONCLUSION

The Board has no involvement in or control over MassDEP's response to Mr. Decoulos's requests for public records. Striking the testimony of Ms. Baran and Mr. Fitzgerald, two of the Board's four witnesses, would be a grave penalty that is

unwarranted. Therefore the Board requests that the Motion to Strike Testimony of Cynthia A. Baran and John Fitzgerald be denied.

Respectfully submitted,

Board of Registration of Hazardous  
Waste Site Cleanup Professionals,  
By its Attorney,

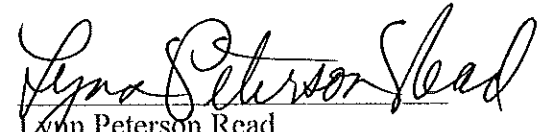
  
Lynn Peterson Read, BBO #551671  
Board of Registration of Hazardous  
Waste Site Cleanup Professionals  
One Winter Street, 3rd Floor  
Boston, MA 02108  
Phone: 617-348-4032

Date: October 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this date a true copy of the Opposition to Motion to Strike Testimony of Cynthia A. Baran and John Fitzgerald was served upon each party in this action by electronic mail to the following address: [jamesj@decoulos.com](mailto:jamesj@decoulos.com).

10/18/10  
Date

  
Lynn Peterson Read

**Read, Lynn (LSP)**

Attachment to Opposition to  
Motion to Strike Testimony of  
Cynthia A. Baran and John Fitzgerald

**From:** Baran, Cynthia (DEP)  
**Sent:** Monday, October 18, 2010 10:49 AM  
**To:** Read, Lynn (LSP)  
**Subject:** FW:

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**From:** Lavoie, Irene (DEP)  
**Sent:** Friday, October 15, 2010 10:59 AM  
**To:** Baran, Cynthia (DEP)  
**Cc:** Tobin, Rebecca (DEP)  
**Subject:**

Hi Cynthia,

I scheduled James Decoulos for Tuesday October 19<sup>th</sup> in the morning. He sent me an e-mail request the date.

Thank you  
Irene

Irene J. Lavoie  
DEP-Southeast Regional Office  
Office: (508) 946-2718 / Fax: (508) 946-2865  
E-Mail: [Irene.Lavoie@state.ma.us](mailto:Irene.Lavoie@state.ma.us)  
"For Use in Intra-Agency Policy Deliberations"