

**COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION OF  
HAZARDOUS WASTE SITE PROFESSIONALS**

January 20, 2011

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In the Matter of James J. Decoulos

Docket No. LSP 10AP 01

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**RULING AND ORDER REGARDING  
IN-CAMERA REVIEW OF DOCUMENTS**

Following my Ruling and Order Regarding the Motion to Compel Documents Pertaining to LNAPL Work Group (January 5, 2011) (“Ruling and Order Regarding Motion to Compel”), the Office of Appeals and Dispute Resolution (“OADR”) received from the Massachusetts Department of Environmental Protection (“MassDEP”) the documents that I ordered were to be reviewed in-camera. See January 13, 2011 cover letter from MassDEP attorney Beverly Coles-Roby to Anne Hartley, Case Administrator. The January 13, 2011, cover letter identifies the documents, which I have reviewed in accordance with the standard set forth in Commonwealth v. Bishop, 416 Mass. 169, 176-184 (1993). The in-camera review has confirmed that the documents are irrelevant for purposes of discovery and the issues to be adjudicated at the adjudicatory hearing. As I stated in my prior ruling:

[T]he documents Mr. Decoulos seeks are preliminary policy related documents that have been and are being generated in the course of general policy discussions that commenced approximately four years after the incidents that form the basis of the alleged violations. See Board’s Order to Show Cause, pp. 2-10 (January 8, 2010); Opposition to Motion to Compel and Motion in

Support of Relevancy;  
<http://www.mass.gov/dep/cleanup/lnapldsc.htm>. These ongoing, tangentially related, and incomplete general policy discussions that have and are occurring over five years after the alleged violations are too far afield in terms of relevance. The documents are too attenuated in terms of time and substantive value; regarding substance, the sought after documents are draft internal policy communications made in the course of general policy deliberations.

After having reviewed the documents, I also find that none of the documents pertain in any way “to Mr. Decoulos’ conduct and remediation with respect to the site at issue (131 Main Street, Carver, MA).” Ruling and Order Regarding Motion to Compel, p. 4. Given these findings, the documents will not be disclosed to the parties and instead will be sealed, designated confidential, and made a part of the record. See Bishop, 416 Mass. at 176-184.

In light of the above findings, I order that:

- (1) the January 13, 2011, cover letter from Ms. Coles Roby to OADR be made part of the public record in this appeal;
- (2) OADR make a photocopy of all the documents identified in the January 13, 2011 cover letter;
- (3) the documents identified in and enclosed with the January 13, 2011, cover letter from MassDEP and the OADR photocopies of those documents are to be sealed in two separate envelopes—one labeled “Confidential photocopies per OADR Order of January 20, 2011: To be opened only according to terms of January 20, 2011, Order” and the other labeled “Confidential documents per OADR Order of January 20, 2011: To be transmitted and opened only according to terms of January 20, 2011, Order”;
- (4) the two sealed envelopes and their contents shall be made a part of the record; they

may not be released to and their contents may not be reviewed by anyone with the exception of a reviewing court or OADR Presiding Officer, absent a valid and appropriate order to the contrary; and

- (5) the envelope containing the sealed photocopied documents shall remain a part of the OADR file while the other envelope with the sealed documents shall remain sealed and be transmitted on appeal to the reviewing court, which shall then have custody of such documents and control access to them.



Timothy M. Jones  
Presiding Officer

1/20/11

**SERVICE LIST**

BOARD OF REGISTRATION  
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CLEANUP PROFESSIONALS

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