

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

March 25, 2010

In the Matter of James J. Decoulos

Docket No. LSP 10AP 01

SCHEDULING ORDER

Pursuant to 309 CMR 7.08 and 801 CMR 1.00 et seq., I have been designated by the Chief Presiding Officer of the Office of Appeals and Dispute Resolution (“OADR”) for the Department of Environmental Protection to act as a Presiding Officer in this matter, pursuant to a vote by the Board of Registration of Hazardous Waste Site Cleanup Professionals requesting OADR to appoint a Presiding Officer. Under those regulations, the Presiding Officer may direct the parties to appear for a Pre-Hearing Conference.

Therefore, I hereby direct the parties to appear at a mandatory Pre-Hearing Conference (the “Conference”) on Tuesday, April 13, 2010 at 1:30 p.m. in the OADR Hearing Room at One Winter Street, 2d Floor, Boston, MA, 02108.¹

¹ All parties should note that although the Presiding Officer in this matter is an employee of the Department of Environmental Protection, which agency initiated a case referral in this matter, the Presiding Officer sits in the Office of Appeals and Dispute Resolution which is an entirely separate operational group providing hearing officer and dispute resolution services to MassDEP. OADR also provides such services to other agencies upon request. Presiding Officers are appointed who have had no prior knowledge of cases at issue. Presiding Officers have duties under M.G.L. c. 30A, 801 CMR 1.00 et seq., and the LSP Board regulations at 309 CMR 7.08 to conduct fair proceedings that protect the rights of all parties involved in the proceeding. Presiding Officers must also comply with the ex parte communication rules required by 801 CMR 1.00 et seq.

Purpose of the Pre-Hearing Conference

Pursuant to 801 CMR 1.00(10), the Conference is intended to assist the parties in resolving some or all of the issues in this matter prior to hearing and to establish a schedule and order of proceedings for the parties to prepare for a hearing on any issues that remain at the time of the Conference. Parties and their counsel **must be prepared** to discuss and make decisions upon:

1. The possibility of the resolution of any or all of the issue in dispute, including the use of mediation or other alternative dispute resolution methods;
2. The simplification or clarifications of the issues, including the conclusion of a final statement of issues for adjudication at hearing;
3. The possibility of obtaining stipulations, admissions, agreements on documents, understanding on matters already of record or similar agreement which would avoid unnecessary proof;
4. The limitation of witnesses and cumulative evidence and finalization of a list of witnesses who would appear for cross-examination at the hearing;
5. The resolution of the need, if any, for witnesses who would need to appear for live direct testimony, and decision upon mandatory prefiled written direct testimony pursuant to 309 CMR 7.08(2);
6. Whether any or all of the issues could be resolved upon written submissions without a hearing.

Required Action by the Parties

The parties are ordered to do the following:

1. **By 5:00 p.m. April 2, 2010**, the parties must confer by telephone or other means to discuss the status of settlement and the amenability of the case to mediation or other forms of alternative dispute resolution. It shall be the responsibility of the Petitioner (Mr. Decoulos or his counsel) to initiate this discussion. The parties may seek the services of an OADR mediator or information on other free or low-cost mediation services by contacting April McCabe, the coordinator of dispute resolution services at 617-556-1171.
2. At the Conference, the parties must be prepared to discuss fully their respective positions in this appeal unless they have settled the appeal prior to the Conference. **By Friday, April 9, 2010**, the parties shall exchange and file with the Case Administrator for OADR, Anne Hartley, a Pre-Hearing Statement, not exceeding five typed double spaced pages, containing the following information:
 - a) A list of unresolved issues for resolution in this matter and each party's position on each such disputed facts (i.e., what the party expects to be able to prove at hearing). Joint statements of issues are highly encouraged;
 - b) A list of witnesses each party intends to present at the hearing, together with a brief written summary of the expected testimony of each witness. A statement of the expertise of any expert witnesses should also be included (e.g., professional engineer, LSP, risk assessor, etc.);
 - c) A list of basic documents that will be necessary for the record in order for the Presiding Officer to reach a decision in this matter and on which the parties can stipulate to admissibility (e.g., Notice of Noncompliance, Notices of Audit Findings, Written Responses to such enforcement documents, IRA plans and reports, Phase reports, Risk Assessment reports, etc.); and

- d) A proposed joint Stipulation of Basic Facts (many were already admitted in Mr. Decoulos' Answer).
3. All parties must attend the Conference in person or by a duly authorized representative who has the authority to make binding agreements, including scheduling commitments for all further proceedings in this matter. Parties should also be certain of their witness' schedules because a hearing date will be set at the Conference.
 4. Bring to the Conference, with copies for all parties and the Presiding Officer, any policies, guidance or professional best practice manuals that any party intends to reference in testimony or motions.
 5. It is expected that the hearing will take place within **180 days from the date of Mr. Decoulos' Answer, which would be no later than approximately the end of July, 2010.** Any party that wishes that the final hearing be held later than July, 2010 must make a motion for such an extension of time at the Conference. Such motion must make a strong showing of special circumstances that warrant additional time.

Rescheduling of the Pre-Hearing Conference

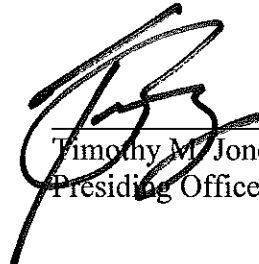
If any party to this appeal has a scheduling conflict that will prevent the party from attending the scheduled Pre-Hearing Conference, that party must inform the Presiding Officer and the parties to this appeal in writing of that scheduling conflict **within seven (7) days of the date of this Order.** Within the same period, the parties must confer and file a joint written motion to reschedule the Pre-Hearing Conference

with OADR proposing three alternative dates when all parties are available prior to April 20, 2010. It is recommended that such a motion be filed electronically.

Service and Filing of Documents

All written notifications to the Presiding Officer required by this Order must be made through Anne Hartley, OADR's Case Administrator, and Anders Meader by (1) forwarding an electronic mail message to Ms. Hartley at Anne.Hartley@state.ma.us and Anders.Meader@state.ma.us with an attached filing; or (2) written correspondence to Ms. Hartley by mail delivery, hand delivery or facsimile delivery at (617) 574-6880. Parties may stipulate to electronic service amongst themselves.

Electronic filings with OADR are preferred. OADR will issue all orders, notices, and other documents via email, unless otherwise requested by the parties based upon a showing of good cause or unless OADR practice or policy dictates that the document should be otherwise served.

 3/25/10
Timothy M. Jones
Presiding Officer

SERVICE LIST

BOARD OF REGISTRATION
OF HAZARDOUS WASTE SITE
CLEANUP PROFESSIONALS

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