

GREGG D. RENKES
ATTORNEY GENERAL

James E. Cantor
Assistant Attorney General
1031 W. Fourth Avenue, Suite 200
Anchorage, AK 99501
(907) 269-5160 (Phone)
(907) 258-5832 (Fax)

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HEARINGS CLERK
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

DOUG BLOSSOM,

Respondent.

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Docket No. CWA-10-2002-0131

MOTION TO QUASH SUBPOENA

Respondent caused a subpoena to be served on Allen Moor (identified as Allan Moore in the subpoena), a management level employee with the State of Alaska Department of Transportation and Public Facilities. The State of Alaska Department of Transportation and Public Facilities moves to quash the subpoena.

40 C.F.R. § 22.19 and 40 C.F.R. § 22.21 authorize the issuance of a subpoena "upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced." 40 C.F.R. § 22.21(b). Respondent filed a Motion for the Issuance of Subpoenas stating:

Allan Moore [sic] is the Head Construction Engineer for the State of Alaska Department of Transportation. He will testify

1
2 about the construction of the culvert running under the Sterling
Hwy. near Mr. Blossom's property.

3 Motion at 2.

4 Respondent failed to note that the culvert at issue was constructed in the
5 1960's and that Mr. Moor has no knowledge of the culvert or its construction. *See*
6 *attached exhibits*. Mr. Moor has not been subpoenaed for his knowledge of the culvert
7 or its construction, but for his general knowledge of culvert construction. Essentially,
8 Mr. Moor has been subpoenaed as an unpaid expert witness.
9

10 Respondent's paralegal confirmed to counsel for the State of Alaska that
11 Mr. Moor has NOT been subpoenaed to testify from his personal knowledge, but
12 rather to testify about how or why culverts are installed. *Id.* A letter Respondent's
13 paralegal sent to Mr. Moor explains, "your testimony will be based on your knowledge
14 of highway construction, and the installation and purpose of a culvert." *Id.*
15 Apparently, Respondent expects Mr. Moor to look at an as-built drawing of the culvert
16 and opine on the content of this as-built. Again, Respondent has subpoenaed a state
17 employee to act as an unpaid expert witness, not as a witness with any personal
18 knowledge of the facts at issue.
19

20 Moreover, Mr. Moor lives and works in Anchorage, 165 highway miles
21 from the location of the hearing. Respondent expects a high-level state construction
22 manager to take an entire day away from state business to travel to Kenai to opine
23 about a culvert he has never seen and its installation forty years ago, about which he
24 has no personal knowledge. Respondent expects the State of Alaska to pay the
25 manager's wage for this day of travel and testimony. The State of Alaska objects to
26

1 this unwarranted subpoena and moves to quash the subpoena. If Respondent needs an
2 expert witness to opine generally about how or why culverts are installed, or even
3 about how this culvert may have affected the surrounding landscape, Respondent
4 should hire one of the many excellent expert witnesses available in Alaska.
5

6 If this were a proceeding under the Rules of Civil Procedure, Rule 45
7 (c)(3)(A)(iv) would allow a witness to move for protection from a subpoena that
8 subjects the witness to undue burden. Rule 45 (c)(3)(B)(iii) would also place severe
9 constraints on the ability to issue a subpoena to a person more than 100 miles away
10 from the place of trial. The State of Alaska believes the same concepts should apply in
11 this case.
12

13 It is an undue burden to require the State of Alaska to forgo the services
14 of an important management-level employee and to pay the salary of that employee so
15 that he can be forced to act as Respondent's expert witness. Moreover, it is an undue
16 burden to require the employee to travel 165 miles to Kenai.¹ Respondent should not
17 be allowed to subpoena a public employee who has no personal knowledge to act as an
18 unpaid expert.
19

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21
22
23 ¹ Aside from actual travel costs, the State would also be liable for a considerable
24 variety of uncompensated expenses if by chance its employee were injured or killed
25 while driving to Kenai on the two-lane roads through the Chugach and Kenai
26 Mountains or flying in a small plane from Anchorage to Kenai. While a fact witness
may be indispensable and thus, in appropriate circumstance, may be have to attend
despite this risk, a witness with no personal knowledge is not indispensable.
Respondents should engage their own expert witness for that testimony.

Accordingly, the State of Alaska Department of Transportation and Public Facilities respectfully requests that the presiding officer quash the subpoena of Al Moor.

Dated this 27th day of April, 2004.

GREGG D. RENKES
ATTORNEY GENERAL

By:


James E. Cantor
Chief Assistant Attorney General
ABA No.: 8611100

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2004.
a true and correct copy of the foregoing document
was mailed by U.S. Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Jeffrey Kopf, Esquire
Assistant Regional Counsel (SEL)
U.S. EPA
One Congress Street
Boston, MA 02114-2023

Mark A. Ryan, Esq.
Assistant Regional Counsel
U.S. EPA, Idaho Office
1435 N. Orchard Street
Boise, ID 83706

Arthur S. Robinson, Esq.
Robinson & Beiswenger
35401 Kenai Spur Highway
Soldotna, AK 99669

and via Fax at: (907) 262-7034


Barbara A. Peterson