



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

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IN THE MATTER OF)
MERCURY VAPOR PROCESSING) DOCKET NO. RCRA-05-2010-0015
TECHNOLOGIES, INC., a/k/a)
RIVER SHANNON RECYCLING, AND)
LAURENCE C. KELLY,)
RESPONDENTS)

ORDER GRANTING COMPLAINANT'S REQUEST FOR EXECUTION OF SUBPOENAS

This proceeding arises under the authority of Section 3008(a) of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928(a). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The hearing in this matter is scheduled to begin on July 25, 2011, in Chicago, Illinois.

On June 23, 2011, Complainant submitted a Request for Execution of Subpoenas ("Request") pursuant to Section 22.21(b) of the Rules of Practice, 40 C.F.R. § 22.21(b), seeking subpoenas for the appearance and testimony of William K. Graham, P.E., and Leonard Worth, President of Fluorecycle, Inc., at the hearing.1 To date, Respondents have not filed a response to Complainant's Request.

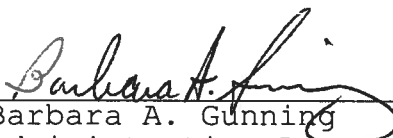
Pursuant to Section 22.21(b) of the Rules of Practice, the presiding Administrative Law Judge "may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced." 40 C.F.R. § 22.21(b). Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), authorizes the issuance of subpoenas for the attendance and testimony of witnesses, as well

1 According to Complainant, these witnesses were previously identified in its Initial, Reply, or First Supplemental Prehearing Exchanges.

as for the production of relevant papers, books, and documents, in proceedings arising under the authority of Section 3008 of RCRA.

In its Request, Complainant states that the witnesses for whom it seeks subpoenas are third-party witnesses who may be reluctant to testify without the issuance of a subpoena. Complainant maintains that Mr. Graham served as an environmental consultant to a now-defunct company that was owned and operated by Respondent Laurence Kelly and that his testimony "will be relevant evidence of Respondent's familiarity with federal and state hazardous waste laws." Request at 3. Complainant further contends that Mr. Graham's testimony "is relevant and material to Respondent's credibility and culpability." *Id.* With respect to Mr. Worth, Complainant states that he will testify as to "the costs of complying with the federal hazardous waste regulations imposed on mercury lamp recyclers." *Id.* Thus, Complainant contends, Mr. Worth's testimony will pertain to the economic benefit component of the proposed penalty for RCRA violation and is relevant and material to the nature, extent, and gravity of the violations.

As a condition precedent to granting a request for the issuance of subpoenas, Section 22.21(b) of the Rules of Practice requires a showing of the grounds and necessity therefor, along with the materiality and relevancy of the evidence to be adduced. See *Blackinton Common, LLC, and CG2, Inc.*, EPA Docket No. RCRA-01-2007-0164, 2008 EPA ALJ LEXIS 43, at *7 (ALJ, Nov. 13, 2008). I find that the discussion of the proposed testimony set forth in Complainant's Request sufficiently meets these requirements. Accordingly, Complainant's Request is hereby **GRANTED**.²



Barbara A. Gunning
Administrative Law Judge

Dated: July 14, 2011
Washington, D.C.

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² The subpoenas requested by Complainant are being issued with this Order.

**In the Matter of Mercury Vapor Processing Technologies, Inc., a/k/a River Shannon Recycling,
and Laurence C. Kelly, Respondent.
Docket No. RCRA-05-2010-0015**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Order Granting Complainant's Request for Execution of Subpoenas**, dated July 14, 2011, issued by Barbara A. Gunning, Administrative Law Judge, was sent on this 14th day of July 2011, in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

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Copy by Facsimile and Regular Mail to:

Laurence Kelly
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Dated: July 14, 2011
Washington, DC