



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
JULIE'S LIMOUSINE &) Docket No. CAA-04-2002-1508
COACHWORKS, INC.,)
)
RESPONDENT)

ORDER ON COMPLAINANT'S REQUEST FOR ISSUANCE OF
ADMINISTRATIVE SUBPOENAS

This civil administrative penalty proceeding arises under the authority of Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

On June 28, 2002, the United States Environmental Protection Agency, Region IV (the "EPA" or "Complainant") filed a Complaint against Julie's Limousine & Coachworks, Inc. ("Respondent"), alleging violations of Sections 114 and 609(c), (d) of the CAA, 42 U.S.C. §§ 7414 and 7671h(c), (d), and the implementing regulations for the servicing of motor vehicle air conditioners found in 40 C.F.R. Part 82, Subpart B. Complainant seeks a civil administrative penalty of \$43,018.50 for the alleged violations. Respondent filed an Answer on July 25, 2002, denying or claiming to have insufficient knowledge of the allegations made by Complainant and contesting the EPA's jurisdiction over this matter.

The hearing in this matter is scheduled to begin on May 5, 2003. On April 1, 2003, Complainant filed a Request for Issuance of Administrative Subpoenas ("Motion"), requesting that the Administrative Law Judge issue subpoenas to four of its witnesses to compel their attendance at the hearing. To date, Respondent has not responded to the Motion.

Section 22.21(b) of the Rules of Practice allows the Administrative Law Judge to issue subpoenas under certain circumstances to require the attendance of witnesses or the production of documents at a hearing. Pursuant to Section 22.21(b), "[t]he Presiding Officer 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."

Since this proceeding arises under the authority of Section 113(d) of the Clean Air Act, the authority for Complainant's request is found in Section 307(a) the Act, 42 U.S.C. § 7607(a). In its Motion, Complainant stated that the testimony of the named individuals "bears a direct relation to Complainant's allegations in this matter and will impart facts not otherwise obtainable by any of Complainant's other witnesses." Although the materiality and relevancy of the evidence to be adduced from these individuals could be gleaned by reference to Complainant's prehearing exchange, there is little demonstration of such in the Motion. More importantly, Complainant has made no showing of the grounds and necessity for the requested subpoenas. *See, e.g., In the Matter of Robert and Susan Wheeler*, Docket No. CWA-05-2001-0019, 2002 EPA ALJ LEXIS 63 at *5 (ALJ, October 1, 2002) (witness unable to be present at the hearing unless issued an administrative subpoena).

As a condition precedent to granting a request for the issuance of subpoenas, Section 22.21(b) requires a showing of the grounds and necessity therefor along with the materiality and relevancy of the evidence to be adduced. *See In the Matter of Crown Central Petroleum Corp.*, Docket No. CWA-8-2000-06, 2001 EPA ALJ LEXIS 133 at *3-4 (ALJ, April 26, 2001); *In the Matter of ARCO Chemical Co.*, Docket No. EPCRA-III-240, CERCLA-III-027, 1999 EPA ALJ LEXIS 14 at *3 (ALJ, March 8, 1999). As discussed above, Complainant's Motion fails to comply with the requirements of this procedural rule. Therefore, Complainant's Request for the Issuance of Administrative Subpoenas must be DENIED.

Order

Complainant's Request for Issuance of Administrative Subpoenas
is DENIED.

Barbara A. Gunning
Administrative Law Judge

Dated: April 23, 2003
Washington, DC