


In the Matter of *Whitehall Township*, Respondent.
Docket No. CAA-03-2014-0092

Corrected Certificate of Service

I hereby certify that copies of the foregoing Order Granting Complainant's Motion for Witness Subpoena, issued by M. Lisa Buschmann, Administrative Law Judge, on this 2nd day of November 2015, were sent to the following in the manner indicated.



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Dated: November 2, 2015
Washington, D.C.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:)
Whitehall Township) Docket No. CAA-03-2014-0092
Respondent.) Dated: October 30, 2015

ORDER GRANTING COMPLAINANT'S MOTION FOR WITNESS SUBPOENA

I. Procedural Posture and Motion

By Order dated August 18, 2015, this matter was scheduled for hearing to begin on November 17, 2015, and continue as necessary through November 19, 2015. The hearing will be located at the Northampton County Court in Easton, Pennsylvania. The August 18, 2015 Order set October 9, 2015, as the deadline for the filing of any non-dispositive motions, such as motions for subpoenas.

On October 23, 2015, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 3 ("Complainant" or "EPA"), filed a Motion for Witness Subpoena ("Motion"). Complainant cites authority for issuance of subpoenas in Section 307(a) of the Clean Air Act ("Act"), 42 U.S.C. § 7607(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice" or "Rules"), codified at 40 C.F.R. Part 22, specifically section 22.21(b). Complainant seeks the issuance of a subpoena for the appearance and testimony of Mr. James A. Weltz of Criterion Laboratories, Inc. in Bensalem, Pennsylvania. Mr. Weltz was the director of the laboratory that provided analysis of demolition debris specimen provided by EPA Inspector Ponak. Mot. at 1. According to Complainant, "Mr. Weltz possesses information that is relevant to the issue of Respondent's liability for the violations alleged in the Complaint, and to the gravity of those alleged violations." Id. at 1-2.

1 On October 21, 2015, the representatives of the parties participated in an informal prehearing conference call with my staff attorney who then informed them to submit all requests for subpoenas by Friday, October 23, 2015.

To date, Respondent has not responded to the Complainant's Motion and no response is required.

II. Legal Standards

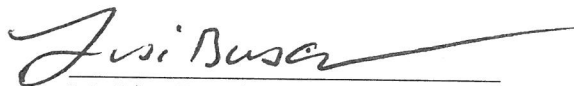
The Clean Air Act provides that "[t]he Administrator may issue subpoenas for the attendance and testimony of witnesses" "[i]n connection with any . . . administrative enforcement proceeding under the [Act]." 42 U.S.C. § 7607(a). In the event of "contumacy or refusal to obey a subpoena," the Act authorizes United States district courts with jurisdiction "to issue an order requiring such person to appear and give testimony before the Administrator . . . and any failure to obey such order of the court may be punished by such court as a contempt thereof." *Id.*

The Rules of Practice provide that the Presiding Officer may require the attendance of witnesses . . . by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevance of the evidence to be adduced." 40 C.F.R. § 22.21(b).

III. Discussion and Conclusion

Complainant has shown adequate grounds and necessity for the issuance of the requested subpoena. Mr. Weltz can provide testimony relevant to both liability and penalty in this case. He was identified in Complainant's Initial Prehearing Exchange. Thus, given the short amount of time remaining before the hearing and the lack of burden or prejudice to Respondents, Complainant's Motion for Witness Subpoena is hereby **GRANTED**. The subpoena will be sent to Donzetta W. Thomas, designated counsel for EPA, for service on Mr. Weltz.

SO ORDERED.



M. Lisa Buschmann
Administrative Law Judge