

RECEIVED

12 MAR 16 PM 3:24

HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ROBERT M. LOOMIS AND
NANCY M. LOOMIS
Haines, Alaska,

Respondents.

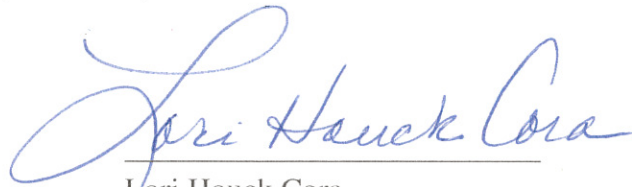
)
)
) DOCKET NO. CWA-10-2011-0086
)
)
)
)
)
)

**COMPLAINANT'S MOTION FOR ADMINISTRATIVE SUBPOENA
TO COMPEL TESTIMONY**

In accordance with the Presiding Officer's November 23, 2011, Order Scheduling Hearing and pursuant to sections 22.16(a) and 22.21(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.16(a), 22.21(b), Complainant, United States Environmental Protection Agency ("EPA"), moves for the Presiding Officer to issue an administrative subpoena compelling Mr. Roger J. Schnabel to appear at the hearing in this matter on May 1, 2012.

The legal grounds and factual basis for this motion are set forth in the attached memorandum. A proposed Subpoena is attached to this motion.

Respectfully submitted this 16th day of March, 2012.



Lori Houck Cora
Assistant Regional Counsel
Region 10

CERTIFICATE OF SERVICE

In the Matter of Robert M. Loomis and Nancy M. Loomis, No. CWA-10-2011-0086, I certify that the foregoing "Complainant's Motion for Administrative Subpoena to Compel Testimony" was sent to the following persons, in the manner specified, on the date below:

Original and one true and correct copy, by hand delivery;

*Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101*

One true and correct copy, by Pouch Mail to:

*The Honorable M. Lisa Buschmann
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460*

One true and correct copy, by first class U.S. Mail to:

Brian J. Stibitz, Esq.
Reeves Amodio LLC
500 L Street, Suite 300
Anchorage, Alaska 99501-1990

Dated: 3-16-2012

Sharon Eng
Sharon Eng, Paralegal
Environmental Protection Agency

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
) DOCKET NO. CWA-10-2011-0086
)
ROBERT M. LOOMIS AND)
NANCY M. LOOMIS)
Haines, Alaska,)
)
Respondents.)

MEMORANDUM IN SUPPORT OF COMPLAINANT’S MOTION FOR ADMINISTRATIVE SUBPOENA TO COMPEL TESTIMONY

I. INTRODUCTION

Complainant, the United States Environmental Protection Agency (“EPA”), submits this Memorandum in support of its Motion for Administrative Subpoena to Compel Testimony. Pursuant to 40 C.F.R. § 22.21(b), the Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena: 1) if authorized under the Act; 2) upon a showing of the grounds and necessity therefor; and, 3) the materiality and relevancy of the evidence to be adduced. 40 C.F.R. § 22.21(b); *see also In re Robert and Susan Wheeler d/b/a Wheeler’s Septic Tank Service*, Docket No. CWA-05-2001-0019, 2002 WL 31297646, (ALJ Order Granting Motion for Administrative Subpoena, October 1, 2002) (noting 40 C.F.R. § 22.21(b), as opposed to 40 C.F.R. § 22.19(e)(4), sets the correct standard under which to evaluate

a motion to issue a subpoena for compelling attendance and testimony at hearing). Section 309(g)(10) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(10), provides that the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section of the CWA. The authority to issue such subpoenas has been delegated to the Presiding Officer. *See* 40 C.F.R. §§ 22.4(c)(9) and 22.21(b). For the following reasons, the issuance of a subpoena is necessary to require the attendance of Roger J. Schnabel, a witness needed by Complainant to prove certain elements of its case.

II. ARGUMENT

In its initial Prehearing Information Exchange, Complainant indicated it would call Mr. Schnabel to testify as a fact witness. Mr. Schnabel is the President of Southeast Roadbuilders, Inc., located in Haines, Alaska.

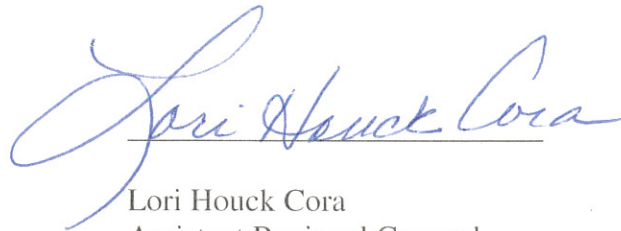
Complainant alleges that Respondents discharged stormwater to tributaries of the Chilkat River and to wetlands adjacent to those tributaries without the required CWA Section 402 permit, and dredged and filled wetlands on their property without a CWA section 404 permit, both in violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a). Respondents deny these allegations. Resp’t Answer at paragraphs 3.18-3.24 (July 19, 2011). Mr. Schnabel’s testimony is necessary to prove material facts. Mr. Schnabel’s company delivered the largest amount of fill material to Respondents’ property on multiple occasions. Mr. Schnabel’s company paid Respondent, Robert Loomis, for taking fill material that his company needed to dispose of. Mr. Schnabel’s company also rented heavy earthmoving equipment to Respondents during the period in question. Mr. Schnabel’s testimony is relevant to, *inter alia*, the amount of fill delivered, the approximate size of the area that his company’s fill covered, and when and what types of

earthmoving equipment Respondents rented to conduct construction activity and discharge the fill material into wetlands. Additionally, Mr. Schnabel's testimony is needed to demonstrate facts relevant to the penalty factors listed CWA Section 309(g)(3), 33 U.S.C. 1319(g)(3), including Respondents' knowledge of the presence of wetlands on their property.

III. CONCLUSION

For the reasons set forth above, Complainant respectfully requests that Complainant's Motion for Administrative Subpoena to Compel Testimony at Hearing be granted and the attached subpoena be issued to Roger J. Schnabel.

Respectfully submitted this 16th day of March, 2012.



Lori Houck Cora
Assistant Regional Counsel
Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)

) DOCKET NO. CWA-10-2011-0086
)

ROBERT M. LOOMIS AND)
NANCY M. LOOMIS)
Haines, Alaska,)

)
) Respondents.)

SUBPOENA

TO: **Roger J. Schnabel**
President
Southeast Roadbuilders, Inc.
HC60 Box 4800
Haines, Alaska 99827

YOU ARE HEREBY COMMANDED, pursuant to Section 309(g)(10) of the Clean Water Act, 33 U.S.C. 1319(g)(10), and Sections 22.4(c)(9) and 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.4(c)(9) and 22.21(b), **TO APPEAR IN PERSON on the following dates and times:**

DATES AND TIMES: May 1, 2012 at 9:30am
May 2, 2012 at 9:30am

AT: [Location in Haines or Juneau, AK]

YOU ARE FURTHER COMMANDED:

TO TESTIFY then and there under oath, and make truthful response to all lawful inquiries and questions put to you by the Parties to the proceedings; and

TO REMAIN IN ATTENDANCE until expressly excused by Administrative Law Judge M. Lisa Buschmann.

NOTICE: FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COURT AS CONTEMPT THEREOF.

ISSUED in Washington, D.C., this _____ day of _____, 2012.

M. LISA BUSCHMANN
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Witness Fees and expenses in the same amounts that are paid witnesses in the courts of the United States shall be paid by the party upon whose request the subpoena is issued, in this instance, Complainant, United States Environmental Protection Agency, Region 10.

Counsel for Complainant: Lori Houck Cora
U.S. EPA Region 10
1200 Sixth Avenue, Suite 900
ORC-158
Seattle, Washington 98101