



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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REGIONAL HEARING OFFICE
USEPA
REGION 5

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 RESPONDENTS' AMENDED 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 July 8, 2011, Respondents filed 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). On July 13, 2011, the undersigned received an Amended Request for Execution of Subpoenas ("Amended Request") from Respondents.¹ Respondents seek subpoenas for the appearance and testimony at the hearing of Mr. Gary Westefer, an Illinois Regulatory Specialist at the U.S. Environmental Protection Agency ("EPA" or "USEPA"), Region 5, and Ms. Mary Allen, Recycling and Education Director of the Solid

¹ The Amended Request provides additional information in support of Respondents' request for the issuance of subpoenas.

Waste Agency of Northern Cook County.² To date, Complainant has not filed a response to Respondents' Request or Amended 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 as for the production of relevant papers, books, and documents, in proceedings arising under the authority of Section 3008 of RCRA.

In their Amended Request, Respondents state that the witnesses for whom Respondents seek subpoenas may be reluctant to testify without the issuance of a subpoena. Respondents represent that Mr. Westefer is expected to testify to "his knowledge of the Illinois Universal Waste Rule, the status of the Illinois Universal Waste Rule and any agreements he may be aware of between the USEPA and Illinois regarding the Illinois Universal Waste Rule." Amended Request.³ Respondents further represent that the Solid Waste Agency of Northern Cook County, for which Ms. Allen serves as Recycling and Education Director, manages "various types of recycling programs[,] including spent lamps[,] for their member communities." *Id.* Respondents assert that Ms. Allen is expected to testify as to the condition of Respondents' property as of October 5, 2007, the date on which she visited the property; River Shannon Recycling's general housekeeping practices at the property; and River Shannon Recycling's "methods of managing large quantities of spent lamps . . . generated and staged at its warehouse." *Id.*

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 Mr. Westefer and Ms. Allen's expected testimony, as set forth in Respondents' Amended Request, sufficiently meets these requirements. Accordingly, Respondents'

² These witnesses were previously identified in Respondents' Second Supplemental Prehearing Exchange.

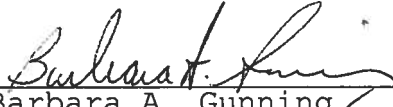
³ Respondents do not number the pages of their Amended Request.

Amended Request is hereby **GRANTED**.⁴

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Barbara A. Gunning
Administrative Law Judge

Dated: July 15, 2011
Washington, D.C.

⁴ The subpoenas requested by Respondents 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 Respondent's Amended Request for Execution of Subpoenas**, dated July 15, 2011, issued by Barbara A. Gunning, Administrative Law Judge, was sent on this 15th 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:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, MC-E-19J
77 West Jackson Blvd.,
Chicago, IL 60604-3590
Fx: 312.692.2405

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Copy by Facsimile and Pouch Mail to:

Jeffrey A. Cahn, Esq.
Kasey Barton, Esq.
Thomas M. Williams, Esq.
Associate Regional Counsel
ORC, U.S. EPA / Region V / C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590 (w/o attachments)
Fx: 312.353.3112

Copy by Facsimile and Regular Mail to:

Laurence Kelly
MVP Technologies, Inc.
a/k/a River Shannon Recycling
7144 N. Harlem Ave., Ste. 303
Chicago, IL 60631
Fx: 773.775.4279

Dated: July 15, 2011
Washington, DC

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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 KELLY,)
Respondents.)

SUBPOENA AD TESTIFICANDUM¹

TO: Gary Westefer
Illinois Regulatory Specialist
RCRA Programs Section of RCRA Branch,
Land and Chemicals Division
USEPA, Region V, MC LR-8J
77 West Jackson Boulevard, 77W-Rm. 08083
Chicago, Illinois 60604-3590

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.21(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“the Rules of Practice”), 40 C.F.R. § 22.21(b), to personally appear and give testimony under oath at the **following times and place**:

DATE: Monday, July 25, 2011, to continue as necessary through Friday, July 29, 2011

TIME: 9:30 a.m. to 4:30 p.m.

PLACE: Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Courtroom 1843
Chicago, Illinois 60604

YOU ARE FURTHER COMMANDED:

¹ This subpoena is to be served on the witness in accordance with Section 22.5(b)(1)(i) of the Rules of Practice, 40 C.F.R. § 22.5(b)(1)(i).

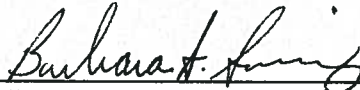
TO APPEAR IN PERSON before the Administrative Law Judge Gunning at the above dates, time, and place;

TO TESTIFY then and there under oath, and make truthful responses 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 Gunning.

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 15th day of July, 2011.



THE HONORABLE BARBARA A. GUNNING
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW JUDGES
Mail Code 1900L
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Witness fees and expenses in the same amounts as are paid to witnesses in the courts of the United States shall be paid by the party upon whose request the subpoena is issued, in this instance, Respondent, Mercury Vapor Processing Technologies, Inc., a/k/a River Shannon Recycling, and Laurence Kelly.

Counsel for Respondent:

Laurence Kelly
MVP Technologies, Inc.
a/k/a River Shannon Recycling
7144 N. Harlem Avenue, Suite 303
Chicago, Illinois 60631

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SUBPOENA FOR GARY WESTEFER

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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IN THE MATTER OF:)
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MERCURY VAPOR PROCESSING) Docket No. RCRA-05-2010-0015
TECHNOLOGIES INC., a/k/a)
RIVER SHANNON RECYCLING)
and LAURENCE KELLY,)
Respondents.)

SUBPOENA AD TESTIFICANDUM¹

TO: Mary Allen
Recycling and Education Director
Solid Waste Agency of Northern Cook County
2700 Patriot Boulevard, Suite 110
Glenview, Illinois 60026

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.21(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“the Rules of Practice”), 40 C.F.R. § 22.21(b), to personally appear and give testimony under oath at the **following times and place**:

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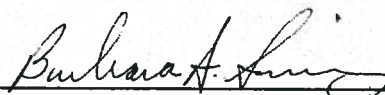
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ISSUED in Washington, D.C., this 15th day of July, 2011.



THE HONORABLE BARBARA A. GUNNING
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW JUDGES
Mail Code 1900L
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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Counsel for Respondent:

Laurence Kelly
MVP Technologies, Inc.
a/k/a River Shannon Recycling
7144 N. Harlem Avenue, Suite 303
Chicago, Illinois 60631

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SUBPOENA FOR MARY ALLEN