



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Adam Construction and Development Services, PLLC, and Nathan Pierce,)
Respondents.)
Docket No. CWA-07-2019-0262

ORDER ON COMPLAINANT’S MOTION FOR WITNESS SUBPOENA

On June 23, 2023, Complainant, the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 7, timely filed a Motion for Witness Subpoena (“Motion”) seeking to compel the attendance and testimony of Tom Robinson at the hearing scheduled to be held in this matter beginning on August 22, 2023, in Billings, Montana. Both Complainant and Respondents Adam Construction and Development Services, PLLC, and Nathan Pierce identified Tom Robinson as a proposed witness in their prehearing exchanges. R.’s Int. Exh. at 4; C.’s Int. Exh. at 3.

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”), set forth at 40 C.F.R. Part 22. Under the Rules of Practice, this Tribunal “may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act [at issue in the proceeding], 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); see also 40 C.F.R. § 22.19(e). In this case, the Clean Water Act provides the necessary authority.¹ See 33 U.S.C. § 1319(g)(10) (“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 subsection.”).

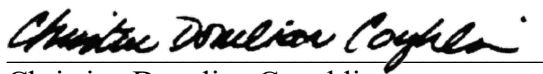
The proposed subpoena attached to Complainant’s Motion reflects that Complainant seeks to compel the attendance and testimony of Mr. Robinson on August 23, 2023, the second day of the scheduled hearing. In support of its request that I issue a subpoena to compel the attendance and testimony of Mr. Robinson at hearing, Complainant avers that Mr. Robinson’s testimony is relevant and material to the issue of Respondents’ liability for the alleged violations.

¹ The Clean Water Act is the common name of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387.

Mot. at 2. Complainant specifically identifies Mr. Robinson's knowledge of Respondents' role in the sludge application project at issue. *Id.*

I find that Complainant has adequately shown the materiality and relevancy of Mr. Robinson's expected testimony. While Complainant did not address in its Motion the necessity for the requested subpoena, I note that during a prehearing conference held in March 2023 in preparation for the hearing that Complainant advised of a potential challenge in securing Mr. Robinson's testimony voluntarily. Further, Respondents have not objected to the Motion and indeed have stated their intention to call Mr. Robinson as a witness at the hearing themselves. For the foregoing reasons, I find it appropriate to grant Complainant's request and compel the appearance of Mr. Robinson to testify at the hearing in the event that he is not willing to appear voluntarily. Accordingly, the Motion is hereby **GRANTED** as to the date of August 23, 2023, or another single day of the hearing otherwise agreed to in advance, in writing, by Mr. Robinson.² A subpoena will be issued contemporaneously with this Order to designated counsel for Complainant for service on Mr. Robinson.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: July 13, 2023
Washington, D.C.

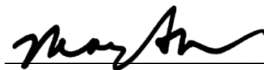
² This Tribunal will generally accept the offer of testimony of non-party witnesses out of order to accommodate the schedule of such witnesses.

In the Matter of Adamas Construction and Development Services, PLLC, and Nathan Pierce,
Respondents

Docket No. CWA-07-2019-0262

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion for Witness Subpoena**, dated July 13, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:

U.S. Environmental Protection Agency

Office of Administrative Law Judges

https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail with Attached Subpoena to:

Christopher Muehlberger, Esq.

Katherine Kacsur, Esq.

Assistant Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 7

Email: muehlberger.christopher@epa.gov

Email: kacsur.katherine@epa.gov

Attorneys for Complainant

Copy by Electronic and Regular Mail to:

Nathan Pierce

16550 Cottontail Trail

Shepherd, MT 59079

Email: adamas.mt.406@gmail.com

For Respondents

Dated: July 13, 2023

Washington, D.C.



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Adamas Construction and) Docket No. CWA-07-2019-0262
Development Services, PLLC, and)
Nathan Pierce,)
)
Respondents.)

SUBPOENA³

TO: Tom Robinson
34819 Highway 212
Lame Deer, Montana 59043

YOU ARE HEREBY COMMANDED, pursuant to 33 U.S.C. § 1319(g)(10) and 40 C.F.R. §§ 22.19(e), 22.21(b), **TO APPEAR IN PERSON** at the following date, time, and place:

DATE AND TIME: August 23, 2023, at 9:00 a.m.⁴

PLACE: James F. Battin Federal Courthouse
4th Floor Courtroom (also known as the Ella Knowles Courtroom)
2601 2nd Avenue North
Billings, Montana 59101

YOU ARE FURTHER COMMANDED:

TO TESTIFY then and there under oath, make truthful responses to all lawful inquiries and questions put to you by the parties and by the undersigned; and

TO REMAIN IN ATTENDANCE until expressly excused by the undersigned.

³ In accordance with the provisions of 40 C.F.R. § 22.19(e)(4), Complainant, the party requesting the attendance of this witness, shall pay fees and mileage to this witness in the amounts paid to witnesses in the courts of the United States.

⁴ The witness and Complainant may, if they mutually agree in writing, in advance, modify the date and/or time for the witness’s appearance, so long as such modification is within the period set by this Tribunal for hearing and does not otherwise delay the timely proceeding and/or closing of the hearing.

PURSUANT TO THE AUTHORITY OF 33 U.S.C. § 1319(g)(10), 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 13th day of July, 2023.



Christine Donelian Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R, WJC East Mailroom 1309
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Person at whose request this Subpoena was issued:

Katherine Kacsur
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66209