



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
TONY J. PAPADIMITRIOU,) DOCKET NO. TSCA-03-2008-0035
)
)
)
RESPONDENT)

**ORDER DENYING COMPLAINANT'S MOTION FOR
ISSUANCE OF SUBPOENAS**

Complainant filed a Motion for Issuance of Subpoenas on February 18, 2009. Specifically, Complainant named Suzanne Long and Darren M. Parmer as the witnesses for whom Complainant is seeking subpoenas.^{1/}

Section 22.21(b) of the Rules of Practice, 40 C.F.R. § 22.21(b), 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,^{2/} upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced."

Complainant has made a showing that the proposed testimony is material and relevant to the issues presented. In support of its Motion for Issuance of Subpoenas, Complainant states that Suzanne Long is a public health professional and case manager for the Pennsylvania department of Health Childhood Lead Poisoning Prevention Program ("CLPPP") for the Lancaster area. Complainant states that it expects Ms. Long to testify as a fact witness regarding such issues as the purpose, function, duties and responsibilities of CLPPP, the general status of residential housing in Lancaster with respect to the presence of lead-based paint, the laws/regulations that her office is responsible for enforcing with respect to lead-based paint and lead-based paint

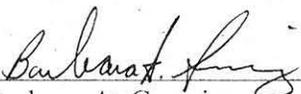
^{1/} Suzanne Long and Darren M. Parmer were listed as proposed witnesses in Complainant's prehearing exchange.

^{2/} Complainant fails to cite authority under the Toxic Substances Control Act ("TSCA"), for the Administrative Law Judge ("ALJ") to issue subpoenas.

hazards, including, but not limited to local notification and disclosure requirements pertaining to lead-based paint and lead-based paint hazards in target housing. Complainant states that Mr. Parmer is employed by the City of Lancaster as a Housing Rehabilitation and Lead Specialist III. Complainant expects him to testify as a fact witness regarding the purpose, function, duties and responsibilities of the Housing and Neighborhood Revitalization Unit, the general status of residential housing in Lancaster with respect to the presence of lead-based paint, the laws/regulations that his office is responsible for enforcing with respect to lead-based paint and lead-based paint hazards, including, but not limited to local notification and disclosure requirements pertaining to lead-based paint and lead-based paint hazards in target housing. The narratives of the proposed testimony set forth in the Motion for Issuance of Subpoenas sufficiently demonstrate the materiality and relevancy of the evidence to be adduced from Ms. Long and Mr. Parmer.

However, Complainant has made no showing of the grounds and necessity for the requested subpoenas. Although it is clear from the Motion that the proposed witnesses are not employees of the EPA, this alone does not demonstrate necessity. For example, Complainant has not demonstrated that the witnesses are unable or unwilling to appear as witnesses for the EPA 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); *See In the Matter of Julie's Limousine & Coachworks, Inc.*, Docket No. CAA-04-2002-1508, 2003 EPA ALJ LEXIS 28 at *3 (ALJ, April 23, 2003); *See In the Matter of Blackinton Common, LLC and CG2 Inc.*, Docket No. RCRA-01-2007-0164 (ALJ, Nov. 13, 2008). As discussed above, Complainant's Motion for Issuance of Subpoenas fails to adequately comply with the requirements of this procedural rule. Therefore, at this time, Complainant's Motion for Issuance of Subpoenas is **DENIED**.

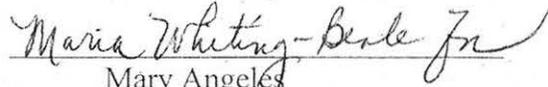

Barbara A. Gunning
Administrative Law Judge

Dated: February 19, 2009
Washington, DC

In the Matter of Tony J. Papadimitriou, Respondent
Docket No. TSCA-03-2008-0035

Certificate of Service

I certify that the foregoing **Order Denying Complainant's Motion for Issuance Of Subpoenas**, dated February 19, 2009, was sent this day in the following manner to the addressees listed below.


Mary Angeles
Legal Staff Assistant

Dated: January 14, 2009

Original and One Copy by Pouch Mail to:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by Facsimile and Pouch Mail to:

Jeffrey S. Nast, Esquire
Assistant Regional Counsel (3RC30)
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

Copy By Facsimile and Regular Mail To:

Charles B. Haws, Esquire
Barley Snyder, LLC
501 Washington Street, 5th Floor
P.O. Box 942
Reading, PA 19603-0942