

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Service Oil, Inc.,) **Docket No. CWA-08-2005-0010**
)
Respondent)

**ORDER GRANTING COMPLAINANT’S MOTION
FOR ISSUANCE OF ADMINISTRATIVE SUBPOENA OF WITNESS**

Respondent is charged in this proceeding with violating Section 301(a) of the Clean Water Act (CWA) for failure to obtain a National Pollution Discharge Elimination System (NPDES) permit authorizing storm water discharges prior to commencing construction activities, and with violating the NPDES permit, when it was obtained, for failure to conduct storm water inspections at the frequency required, and to record and/or maintain site inspection records. The hearing in this matter is scheduled to commence on April 25, 2006 in Fargo, North Dakota. Complainant submitted a Motion for Issuance of Administrative Subpoena of Witness on December 15, 2005, seeking a subpoena for a witness, Mark Bittner, an engineer for the City of Fargo, to appear at the hearing.

Section 309(g)(10) of the CWA provides as follows for the issuance of subpoenas in an administrative proceeding:

The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of documents in connection with hearings under this subsection.

33 U.S.C. § 1319(g)(10). The Consolidated Rules of Practice, at 40 C.F.R. § 22.4(c)(9), provide that the Presiding Judge may “Issue subpoenas authorized by the Act” and “may require the attendance of witnesses [at a hearing]. . . by subpoena, if authorized under the Act, upon a showing of grounds and necessity therefor, and the materiality and relevance of the evidence to be adduced.” 40 C.F.R. §§ 22.4(c)(9), 22.21(b).

Mr. Bittner was listed in Complainant’s Prehearing Exchange as a witness to testify that runoff from Respondent’s facility drains into the City of Fargo’s municipal separate storm water system, which drains into the Red River which is a “navigable water” and “water[] of the United States,” and to testify as to storm water related engineering practices. In its Motion, Complainant asserts that in order to show Respondent’s liability, Mr. Bittner’s testimony is needed to prove there was a discharge into “waters of the United States.” Complainant asserts

further that the subpoena is necessary because the City of Fargo requires all City employees to be subpoenaed in order to testify. Complainant also asserts that Respondents' counsel stated that Respondent does not object to the Motion. Complainant has shown the grounds and necessity for a subpoena for Mr. Bittner, and has shown the materiality and relevance of his proposed testimony.

Accordingly, Complainant's Motion for Issuance of Administrative Subpoena of Witness is **GRANTED**. However, while the hearing has been scheduled to commence in Fargo, North Dakota, the exact location of the hearing has not yet been determined. When those arrangements are completed, a subpoena requesting Mr. Bittner's appearance at the hearing, at the appointed time and location, will be issued.

Susan L. Biro
Chief Administrative Law Judge

Dated: December 29, 2005
Washington, D.C.