

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. WAYNE T. DONER, et al.,	:	Case No. 2009-1292
	:	
Relators,	:	Original Action in Mandamus
	:	
v.	:	
	:	
SEAN D. LOGAN, Director,	:	
Ohio Department of Natural Resources, et al.,	:	
	:	
Respondents.	:	

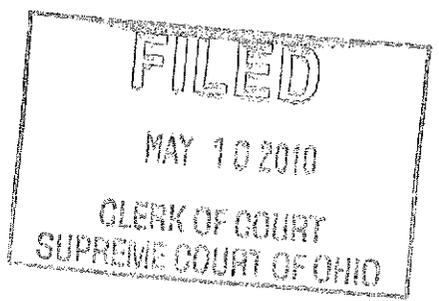
NOTICE OF SERVICE AND FILING SUBPOENA TO JIM MOIR

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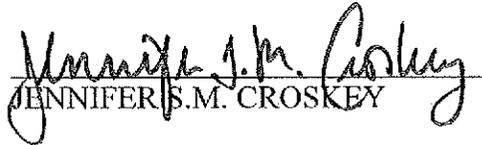
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 Counsel for Respondents



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was sent by electronic and regular mail on May 10, 2010, to Bruce L. Ingram, Joseph R. Miller, Thomas H. Fusonie, Kristi Kress Wilhelmy, and Martha C. Brewer, Vorys, Sater, Seymour & Pease, P.O. Box 1008, Columbus, OH 43216.

  
JENNIFER S.M. CROSKEY

IN THE SUPREME COURT OF OHIO, 65 S. FRONT STREET, COLUMBUS, OHIO 43215  
[[[[[ CIVIL CASE SUBPOENA ]]]]]

STATE OF OHIO EX REL. WAYNE T. DONER, ET AL.,

Case No. 2009-1292

Relators,

v.

SEAN D. LOGAN, DIRECTOR OHIO DEPARTMENT  
OF NATURAL RESOURCES, ET AL.,

Respondents.

TO: JIM MOIR  
651 COLBY DR  
WATERLOO, ONTARIO, CANADA N2V 1C2

**YOU ARE HEREBY COMMANDED TO:**

\_\_\_\_\_ ATTEND AND GIVE TESTIMONY AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.

\_\_\_\_\_ ATTEND AND PRODUCE (DOCUMENTS) (TANGIBLE THINGS) AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.

X  PRODUCE, AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY DESIGNATED DOCUMENTS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

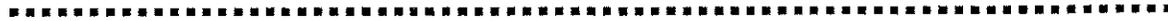
\_\_\_\_\_ PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

\_\_\_\_\_ PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIV. R 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED BELOW. *DESCRIPTION OF LAND OR OTHER PREMISES:* \_\_\_\_\_

Day  Friday  DATE  May 7, 2010  TIME  9:00 am

PLACE  Office of the Attorney General, 30 East Broad Street, 26th Floor, Executive Agencies Section, Columbus, OH 43215

DESCRIPTION OF ITEMS TO BE PRODUCED:  See Exhibit A attached.



THE STATE OF OHIO  
Franklin County, ss:  
To the Sheriff of  N/A  County, Ohio Greetings:

**YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.  
WITNESS MY HAND AND SEAL OF SAID COURT THIS 5TH OF MAY, 2010.  
KRISTINA D. FROST, CLERK OF THE SUPREME COURT OF OHIO**

BY:  Jennifer S. M. Croskey   
SIGNATURE OF ATTORNEY FOR RESPONDENTS

REQUESTING PARTY INFORMATION

NAME  Jennifer S. M. Croskey   
ATTORNEY FOR RESPONDENTS

ATTORNEY CODE  0072379  TELEPHONE NUMBER:  614-466-2980

**\* \* \* \* RETURN OF SERVICE \* \* \* \***

I received this subpoena on  May 5, 2010 , and served the party named above by  personal service on May 5, 2010 .

Jennifer S. M. Croskey   
(Signature of Serving Party)  
Circle One: Deputy Sheriff Process Server      Attorney Deputy Clerk

## **CIVIL RULE 45(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2) (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

## **CIVIL RULE 45(D) DUTIES IN RESPONDING TO SUBPOENA**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

## EXHIBIT A

### DEFINITIONS

1. "AND" and "OR" as used herein are both conjunctive and disjunctive;
2. "DOCUMENT" means all original writings of any nature whatsoever and all non-identical copies thereof, in your possession, custody or control, or the possession, custody or control of any agent, officer, employee, independent contractor, representative or any person acting in concert with you regardless of where located, and includes, but is not limited to, contracts, agreements, memoranda, records, tape recordings, letters, correspondence, communications, diary entries, reports, financial statements and reports, contact sheets, studies, summaries, minutes, notes, pencil notes, jottings, agendas, bulletins, notices, announcements, instructions, charts, manuals, brochures, schedules, price lists, invoices, client lists, telephone logs, telephone toll records, telegrams, teletypes, computer generated data, whether printed or stored on computer disc or tape and other documents as defined in Civ. R. 34. In all cases, where original and/or nonidentical copies are not available, "DOCUMENT" also means identical copies of such original documents and copies of non-identical copies;
3. "IDENTIFY" and "IDENTITY" have the following meanings:
  - (a) when used in reference to a natural person means to state the person's full name, title, telephone number and current business and residence addresses. If the current business or residence addresses are unobtainable, then state the last known business or residence address and the last known date on which each such address was current;
  - (b) when used in reference to a document means to provide, with respect to the document, the following information:
    - (i) information sufficient to enable the State to identify the document or writing, including such matters as its date, the name of the addressee or addressees, the name of the sender or senders, the title or headings of the document, and the number of pages it contains;
    - (ii) the identity and address or addresses of the person or persons to whom copies were sent;
    - (iii) the present or last known location of the possessor of the original of the document (or, if that is unavailable, the most legible copy);
    - (iv) the identity of the natural person from whose file or possession the document was taken to permit production of the document;
4. "PERSON" and the possessives thereof, means an individual, corporation, proprietorship, partnership, professional corporation, association, business trust, estate, trust, cooperative, group, governmental agency or agent and any other entity;
5. "YOU" or "YOUR" means Pressley Campbell, Jim Moir, Conestoga-Rovers & Associates, and any other companies or entities with which you are associated and/or affiliated and any employees, agents, representatives, attorneys, accountants, and any other persons or entities representing you and/or directly or indirectly employed by or connected with you;

6. "LAWSUIT" means the case entitled *State of Ohio ex rel. Wayne T. Doner, et al. v. Sean D. Logan, Director Ohio Department of Natural Resources, et al.*, Ohio Supreme Court, Case No. 2009-1292;

7. "RELATORS" means and refers to any and all of the Relators in *State of Ohio ex rel. Wayne T. Doner, et al. v. Sean D. Logan, Director Ohio Department of Natural Resources, et al.*, Ohio Supreme Court, Case No. 2009-1292, see Attachment 1, and includes any employee, agent, contractor, subcontractor, representative, surveyor, or attorney or other person acting on behalf of the Relators in this action.

## INSTRUCTIONS

1. If a requested document is claimed to be objectionable only in part, such objection should be so limited and any otherwise responsive document should be redacted accordingly.

2. If anything has been redacted, deleted, detached or otherwise removed from a document produced in response to a document request:

- (a) specify the reason for the redaction, deletion, detachment or other removal;
- (b) specify the nature of the material redacted, deleted, detached or otherwise removed;
- (c) state the date the redaction, deletion, detachment or other removal was made; and
- (d) identify the person responsible for making the redaction, deletion, detachment or other removal.

3. If you claim privilege as a ground for refusing to produce a document for Respondents' examination, furnish a list at the time of production identifying each document so withheld together with the following information:

- (a) the reason for withholding;
- (b) a statement of facts constituting the basis for any claim of privilege or other ground of nondisclosure; and
- (c) A brief description of the document, including:
  - (i) the date of the document;
  - (ii) the name of its author, authors, or preparer and an identification by employment and title of each such person;
  - (iii) the names of each person who was sent or has had access to, or custody of the document, together with an identification by employment and title of each such person;
  - (iv) the paragraph of this request to which the document relates; and
  - (v) in the case of any document relating in any way to a meeting or conversation, identification of such meeting or conversation and persons attending or participating in such meeting or conversation.

4. If any documentary material responsive to any paragraph of this request was, but is no longer, in your possession, custody or control, for each such item state whether:

- (a) it is missing or lost;
- (b) it has been destroyed;
- (c) it has been transferred, voluntarily or involuntarily to another, or
- (d) it has been otherwise disposed of.

Identify all such documentary materials by listing for each item: type of documentary material (letter, memorandum, photograph, etc.), date, author, recipient, persons to whom copies were furnished or who otherwise obtained or saw copies, job titles and employers of each of these persons, subject matter of the documentary material, present location and custodian if known, and whether the documentary material or any copies are still in existence.

## DOCUMENTS REQUESTED

1. All documents that reflect, refer, or relate in any way to the Lawsuit.
2. All documents that reflect, refer, or relate in any way to hydrology or hydraulics review and analysis you have performed, rendered, or were billed to Relators including, but not limited to, all raw and processed data used in your hydrology or hydraulics modeling with documentation of the sources of that data as well as the hydrologic or hydraulic models you have developed that relate to the Lawsuit.
3. All reports, draft reports, draft documents of any kind, files or notes of any kind, and/or review documents of any kind that in any way reflect, refer, or relate to the Lawsuit or any hydrology or hydraulics review and analysis you have performed, rendered, or were billed to Relators.
4. All notes, correspondence, email, or other documents that reflect, refer, or relate in anyway to communications between you and Relators related to the Lawsuit or any hydrology or hydraulics analysis you have performed rendered, or were billed to Relators.
5. All documents given to Relators by you or received by you from Relators that reflect, refer, or relate in any way to communications between you and Relators related to the Lawsuit or any hydrology or hydraulics analysis you have performed, rendered, or were billed to Relators.
6. All documents that reflect, refer, or relate in anyway to any contract or agreements between you and Relators related in anyway to the Lawsuit or any hydrology or hydraulics analysis you have performed, rendered, or were billed to Relators.
7. All documents that identify or describe any and all instances and matters in which any employee has previously served or currently serves as an expert witness for Relators and for which Conestoga-Rovers and Associates has received compensation.
8. Any trial or deposition transcripts in which Pressley L. Campbell or Jim Moir provided expert testimony that you have in your possession and for which Conestoga-Rovers and Associates received compensation.
9. Any written or electronic articles, books or chapters thereof, treatises, journal articles or any other publication authored or edited by Pressley L. Campbell or Jim Moir which are in the custody, possession, or control of Conestoga-Rovers and Associates.