



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

February 7, 2017

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OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

**RE: Invitation to participate in mediation for settlement of case
In the Matter of *New York State Department of Transportation*,
Docket No. CWA-02-2016-3403**

Dear Mr. Murphy:

The U.S. Environmental Protection Agency's Office of Administrative Law Judges ("Office") offers an Alternative Dispute Resolution ("ADR") process to facilitate the settlement of adjudicative cases. Please inform an attorney-advisor for this Tribunal, Jennifer Almase, by **February 22, 2017**, as directed later in this letter, as to whether you accept or decline this offer to participate in the ADR process in an effort to settle the above-cited case. The ADR process is conducted pursuant to the Administrative Dispute Resolution Act of 1996, as amended, 5 U.S.C. §§ 571–584, by a judge of this Office serving as a neutral. The process is entirely voluntary and completely confidential; these points, together with general procedures, are reviewed below.

Voluntary. Both the Agency and the respondent(s) must elect to participate in the ADR process. The choice to accept or decline the offer to participate does not prejudice either party. If the parties do elect to participate, either party may terminate the ADR process at any time for any reason.

Confidential. The ADR process will be conducted in a confidential manner, in accordance with Section 574 of the Administrative Dispute Resolution Act of 1996. The judge who serves as the neutral will not disclose to anyone the contents of any of the parties' confidential communications during the ADR process.

Initial Procedures and Method. A judge in this Office will serve as a neutral. The ADR judge will ordinarily begin by arranging a telephone conference with all of the parties to establish procedures. The parties are encouraged to discuss their expectations of the ADR process with the ADR judge. As a general practice, the Office offers mediation by telephone as the method of ADR. As mediator, the ADR judge hears each party's position and arguments, either in writing, orally, or both; helps identify the factual and legal issues; enables each party to understand the other party's position and arguments; keeps the focus on the facts and issues that

may lead toward settlement; and helps the parties explore their options, including practical concerns, to assist in reaching a settlement. The ADR judge may ask questions of the parties and may request that the parties submit documents or other information. At the parties' request, the ADR judge may offer an opinion as to the strengths and/or weaknesses of a case and/or defenses; however, the decision to do so, and whether to deliver the opinion in writing or orally, is entirely within the discretion of the ADR judge. If the ADR judge does offer an opinion, the parties may elect to discuss it with the ADR judge separately or together with the other party or parties.

Authorization to Commit. For the ADR process to be effective, the persons communicating with the ADR judge must either have authority to commit his or her side to a settlement, or have ready access to a person with such authority.

Method of Communication. All ADR discussions and conferences are held by telephone, except where the parties can demonstrate, and the ADR judge agrees, that an in-person or video settlement conference, or a visit to a particular location by the parties and the ADR judge, is necessary.

Non-Binding. The ADR judge has no authority to impose a decision or settlement of the case on the parties. The purpose of ADR is to assist the parties in reaching a settlement on their own terms.

Impartial. The ADR judges, like all judges in this Office, render their decisions and opinions independent of any supervision or direction by any prosecuting or investigating employee or agent of the U.S. Environmental Protection Agency, and independent of the influence of any interested person outside the Agency, pursuant to Sections 554(d) and 557 of the Administrative Procedure Act. The judges are certified as Administrative Law Judges by the Office of Personnel Management and are appointed in accordance with 5 U.S.C. § 3105. The judges are not subject to evaluation by the U.S. Environmental Protection Agency or by any component or employee of the Agency. These measures ensure the fair and impartial resolution of proceedings before this Office.

Duration. Unless terminated earlier by either party, the ADR process will continue for 60 days from the date the case is assigned to the ADR judge. After that time, if no settlement has been reached, the case will be assigned to another judge to commence the litigation process.

Follow-Up. At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential, except that the information will be put into a composite format for use by this Office.

Again, please inform Jennifer Almase by February 22, 2017, as to whether you elect to participate in the ADR process that I have described above. It is preferred that you notify Ms. Almase by email at almase.jennifer@epa.gov. However, you may also inform Ms. Almase by calling her at (202) 564-1170, by sending a facsimile to (202) 565-0044, or by sending a letter that will be received in this Office on or before the response deadline. If such a letter is sent by U.S. mail, the mailing address for the Office is as follows:

U.S. Environmental Protection Agency
Office of the Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue, NW
Washington, DC 20004

Your email, telephone message, facsimile, or letter responding to this offer **must** state:

- (1) your name and phone number;
- (2) the name(s) of the respondent(s) named in the complaint;
- (3) the case docket number;
- (4) the name of the party you represent; and
- (5) whether you wish to participate, or do not wish to participate, in ADR.

You may also inform Ms. Almase as to whether another party in the case accepts or declines the offer to participate in ADR, if that party has requested that you convey that information on that party's behalf. In that event, your email, telephone message, facsimile, or letter **must** also state:

- (1) the name, email, and telephone number of the person who made the request;
- (2) the name of the party represented by that person; and
- (3) whether that party wishes to participate, or does not wish to participate, in ADR.

If you have another party convey your choice regarding ADR, then you should confirm, on or before the response deadline stated herein, that this Office has received the message.

If no response to this offer of ADR is received in this Office by the deadline from you or another party on your behalf, it will be assumed that you **do not** wish to participate in ADR and the case will be assigned immediately to a judge for litigation. **No extension of the deadline for deciding whether you wish to participate in ADR will be granted.** However, ADR may be available later in the litigation process upon joint motion of all parties to initiate ADR, which may be granted at the sole discretion of the presiding litigation judge.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Biro', written over a horizontal line.

Susan L. Biro
Chief Administrative Law Judge

cc: Alicia McNally, Esq., counsel for Respondent
Mary Angeles, Headquarters Hearing Clerk



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WASHINGTON, DC 20460

February 7, 2017

Alicia McNally, Esq.
Assistant Counsel
Division of Legal Affairs
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232

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Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Biro', written over a horizontal line.

Susan L. Biro
Chief Administrative Law Judge

cc: Timothy Murphy, Esq., counsel for Complainant
Mary Angeles, Headquarters Hearing Clerk