



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
ISP Freetown Fine Chemicals, Inc.,) **Docket No. RCRA-01-2018-0062**
)
Respondent.)

**ORDER TO SUBMIT JOINT STATEMENT
REGARDING ALTERNATIVE DISPUTE RESOLUTION**

On September 26, 2018, the United States Environmental Protection Agency, Region 1 (“Complainant”), initiated this proceeding by filing a Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) against ISP Freetown Fine Chemicals, Inc. (“Respondent”), pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a). After Complainant amended the Complaint on June 7, 2019, Respondent filed an answer to the Complaint, as well as a Motion to Dismiss Counts Two Through Eight for Failure to State a Claim (“Motion to Dismiss”) and a memorandum in support of the Motion to Dismiss.

This matter was subsequently referred to this Tribunal for adjudication. I was first designated to preside by Order dated July 11, 2019, and I issued two orders of a procedural nature – the first ruling on Complainant’s motion for an extension of time to file a response to the Motion to Dismiss and the second ruling on Respondent’s motion for an extension of time to file a reply related to the Motion to Dismiss and a response to a motion filed by Complainant seeking to strike certain defenses raised by Respondent in its answer – before transferring this matter to my esteemed colleague, Administrative Law Judge Christine Donelian Coughlin, by Order dated August 1, 2019. Judge Coughlin presided over the litigation of this matter until January 23, 2020, when she granted the parties’ Joint Motion Requesting Alternative Dispute Resolution and transferred this case to me for assignment of a neutral to preside over the alternative dispute resolution (“ADR”) process.

The ADR process offered by this Tribunal is conducted pursuant to the Administrative Dispute Resolution Act of 1996 (“ADRA”), as amended, 5 U.S.C. §§ 571–584, with a staff member who has training in mediation, typically an Administrative Law Judge, serving as the neutral. On the subject of neutrals, the ADRA provides:

A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to the dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is

fully disclosed in writing to all parties and all parties agree that the neutral may serve.

5 U.S.C. § 573(a). Additionally, the procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22, provide that “[t]he parties may choose any person to act as a neutral, or may move for the appointment of a neutral.” 40 C.F.R. § 22.18(d)(3). Where the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, who then “shall designate a qualified neutral.” *Id.*

In the present proceeding, I presided over the litigation of this matter initially, but my assignment was limited in both scope and duration, as I did not consider any substantive matters during the three weeks I was presiding. Thus, I do not see any conflict that would disqualify me from serving as the neutral during the ADR process. If the parties have an objection to my appointment as the neutral, however, a senior attorney for this Tribunal who has received training in mediation could serve as the neutral. Alternatively, the parties may identify another individual who they would consider acceptable, such as a private mediator, to conduct mediation during the time frame that the ADR process offered by this Tribunal is typically conducted.¹ The parties shall file a joint statement identifying their preferences regarding the individual to serve as a neutral on or before **February 7, 2020**. Upon consideration of that statement, I will then issue an order consistent with the parties’ preferences.



Susan L. Biro
Chief Administrative Law Judge

Dated: January 29, 2020
Washington, D.C.

¹ Typically, the ADR process continues for 60 days, with an extension of up to 60 additional days if requested by the parties.

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Docket No. RCRA-01-2018-0062

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order to Submit Joint Statement Regarding Alternative Dispute Resolution**, dated January 29, 2020, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

Jennifer Almase
Attorney-Advisor

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
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Dated: January 29, 2020
Washington, D.C.