

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Spirit AeroSystems, Inc.,

Respondent.

)
)
)
)
)

Docket No. RCRA-07-2009-0012

**ORDER GRANTING JOINT MOTION FOR APPOINTMENT OF NEUTRAL
AND ORDER REINITIATING ALTERNATIVE DISPUTE RESOLUTION PROCESS
AND REAPPOINTING NEUTRAL**

After the Complaint and Answer were filed in this matter, the parties accepted the offer to engage in Alternative Dispute Resolution (ADR). On November 13, 2009, an order was issued initiating the ADR process and appointing Judge Spencer T. Nissen as the neutral to conduct ADR in this matter. On November 25, 2009, Complainant filed a Motion for Leave to File Amended Complaint, and because of this filing, which is not appropriately part of the ADR process, the ADR process was terminated by order dated December 16, 2009, and the undersigned was designated to preside in this proceeding. The motion to amend the Complaint was granted, and the Amended Complaint was filed.

On January 13, 2010, the parties filed a Joint Motion for Appointment of a Neutral to Initiate the Alternative Dispute Resolution Process on the basis that the parties did not have the opportunity to participate in ADR, as ADR conferences were never scheduled or conducted, and the parties believe that ADR would be productive in pursuing settlement of this matter.

The ADR process in the Office of Administrative Law Judges is offered to the parties once for a limited, but ample, period of time, and thereafter there is no entitlement to opt back into ADR. Here, however, the parties were not provided ample time to engage in ADR. It is in the interest of the parties and judicial economy for the parties to settle this matter on mutually agreeable terms rather than litigate the matter to conclusion. For good cause shown, the Joint Motion for Appointment of a Neutral to Initiate the Alternative Dispute Resolution Process in this matter is **GRANTED**.

Accordingly, Judge Spencer T. Nissen is hereby designated as a neutral to initiate and conduct such processes as may facilitate a settlement of this proceeding.

The following procedures shall apply:

1. The Alternative Dispute Resolution (ADR) process will be conducted in a confidential manner. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.

2. For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to someone with such authority.

3. Unless terminated earlier at the request of either party, the ADR process shall automatically terminate on **March 15, 2010**. An extension of up to 60 days may be granted by the undersigned upon request of the ADR neutral, but in no event shall ADR continue for longer than 4 months. At that time, if no settlement has been reached, the case will be remanded to the litigation Judge to proceed with the litigation process in an expedited manner.

4. A party requesting termination of this process shall so advise the assigned neutral Judge either orally or in writing. The neutral Judge shall forward the request to the Chief Administrative Law Judge. The dispute resolution process initiated by this Order shall terminate upon order of the Chief Administrative Law Judge.

5. At the termination of the ADR process, the parties will be sent a questionnaire to elicit their views and the experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.



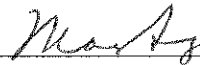
Susan L. Biro
Chief Administrative Law Judge

Date: January 15, 2010
Washington, D.C.

In the ADR matter of *Spirit AeroSystems, Inc.*, Respondent.
Docket No. RCRA-07-2009-0012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Joint Motion for Appointment of Neutral and Order Reinitiating Alternative Dispute Resolution Process and Reappointing Neutral**, dated January 15, 2010, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Hand Delivery to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA / Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460

One Copy by Facsimile and Pouch Mail to:

Kristen Nazar, Esq.
Office of Regional Counsel
ORC / U.S. EPA / Region VII
901 North 5th Street
Kansas City, KS 66101
Fx: 913.551.7925

One Copy by Facsimile and Regular Mail to:

Charles P. Efflandt, Esq.
Foulston Siefkin, LLP
Commerce Bank Center
1551 N. Waterfront Pkway., Ste. 100
Wichita, KS 67206-4466
Fx: 1866-738-3158

Dated: January 15, 2010
Washington, D.C.