

**CERTIFICATION OF THE ADMINISTRATIVE RECORD BEFORE  
EPA's Office of the Administrative Law Judges**

I am the Clerk for EPA Office of the Administrative Law Judges (OALJ). My duties include maintenance of the official records for matters before OALJ.

I hereby certify that the attached index constitutes a true and correct index to the administrative record pertaining to the EPA's adjudication in the proceeding listed below.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Date: 1/16/13

Sybil Anderson

Sybil Anderson, Clerk  
The Office of the Administrative Law Judges  
1200 Pennsylvania Ave, NW MailCode 1900L  
Washington, DC 20460

**RECEIVED**

JAN 22 2013

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

2013 JAN 16 AM 9:24  
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**Docket Index for:  
Lester Sykes  
TSCA-05-2008-0013**

Filing Date	Filing #	Description	Originator
6/26/2008	1	Complaint	EPA/Region 5
10/13/2011	2	Declaration of La Dawn Whitehead	La Dawn Whitehead
10/20/2011	3	COMPLAINANT'S MOTION FOR DEFAULT ORDER, FINDING OF LIABILITY AND PENALTY and MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION FOR DEFAULT ORDER, FINDING OF LIABILITY AND PENALTY - EXHIBITS NOT INCLUDED TOO VOLUMINOUS -	EPA, REGION 5
8/31/2012	4	Order Denying Motion for Default	Ann Coyle, RJO
9/14/2012	5	Certificate of Service	La Dawn Whitehead
11/8/2012	6	Filing of Answer	EPA, REGION 5
11/8/2012	7	Filing of Certification of Service AND Filing of Proof of Service of Complaint	EPA, REGION 5
12/12/2012	8	EPA, Region 5 as a Courtesy to Respondent Lester Sykes Filed Respondent's Answer	EPA, REGION 5
12/12/2012	9	Answer Cover Letter with Courtesy to Respondent, EPA Filed Respondent's Answer	La Dawn Whitehead
12/13/2012	10	Alternative Dispute Resolution	Office of Administrative Law Judges
1/2/2013	11	Order Initiating Adr Process And Appointing Neutral	Office of Administrative Law Judges
1/15/2013	12	Order Returning Case To Chief Administrative Law Judge And Report Recommending Termination Of Adr Process And Return To Regional Judicial Officer.	Office of Administrative Law Judges
1/15/2013	13	Order Remanding Case To Regional Judicial Officer	Office of Administrative Law Judges

2013 JAN 16 AM 9:24  
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ  
2013 JAN 15 AM 9:47

IN THE MATTER OF: )  
 )  
LESTER SYKES, ) Docket No. TSCA-05-2008-0013  
 )  
Respondent. )

ORDER REMANDING CASE  
TO REGIONAL JUDICIAL OFFICER

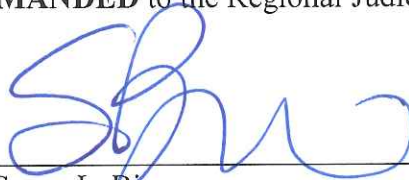
The Complaint initiating this proceeding was filed *over four (4) years ago*, on June 26, 2008, pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22 (“Rules”), which govern this proceeding. On August 31, 2012, the Regional Judicial Officer (RJO) issued an Order denying the Agency’s Motion for Default on the basis that the Complaint in this matter was not served in accordance with the applicable procedural rules and did not meet the requirements of due process. Thereafter, on December 12, 2012, the Agency submitted to the Regional Hearing Clerk a “Filing of Certification of Service” and a “Filing of Answer,” attached to which was an “Answer” from Respondent pre-dating the RJO’s Order. However, no motion for reconsideration of the RJO’s prior Order was filed by the Agency. Subsequently, without opportunity for further consideration undertaken by the RJO, the case was forwarded by the Regional Hearing Clerk to the undersigned and the Office of Administrative Law Judges for hearing. It was then assigned to an Administrative Law Judge (ALJ) for Alternative Dispute Resolution (ADR) as a preliminary process prior to hearing.

By Order dated January 14, 2012, the ADR ALJ has returned the case noting that the RJO’s Order as to the lack of proper service of the Complaint “remains in force,” as there is no evidence that the Respondent properly filed an Answer in this proceeding thereby acknowledging proper service and/or waiving his right to contest the lack thereof. Therefore, it is appropriate to remand this case back to the RJO for further consideration and action as she may deem appropriate<sup>1</sup>

---

<sup>1</sup> Rule 22.16(c) provides that “[t]he Regional Judicial Officer . . . shall rule on all motions filed or made *before an answer* to the complaint is filed,” and “an Administrative Law Judge shall rule on all motions filed or made *after an answer* is filed . . .” 40 C.F.R. § 22.16(c)(italics added). As to Respondent’s “answer,” the Rules require that it be “filed” with the Regional Hearing Clerk, and “clearly and directly admit, deny or explain *each* of the factual allegations contained in the complaint . . .” or include a statement that respondent has no knowledge of a particular factual allegation. 40 C.F.R. § 22.15(b)(italics added). Failure to so respond with respect to any material allegation constitutes an admission of the allegation. 40 C.F.R. §

Accordingly, this matter is hereby **REMANDED** to the Regional Judicial Officer for further adjudication.



Susan L. Biro  
Chief Administrative Law Judge

Dated: January 15, 2013  
Washington, D.C.

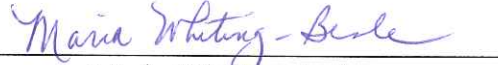
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22.15(d). Respondent is also required to include in its Answer “the circumstances or arguments which are alleged to constitute the grounds of defense; the facts which respondent disputes; the basis for opposing any proposed relief; and “whether a hearing is requested.” 40 C.F.R. § 22.15(b).

In the Matter of Lester Sykes, Respondent  
Docket No. TSCA-05-2008-0013

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Remanding Case To Regional Judicial Officer**, dated January 15, 2013, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale  
Staff Assistant

Dated: January 15, 2013

Original And One Copy To:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900 L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Copy By Regular Mail To:

Marcy A. Toney  
Regional Judicial Officer  
U.S. EPA  
Mail Code E-19J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Mary T. McAuliffe, Esquire  
Associate Regional Counsel  
U.S. EPA  
Mail Code C-14J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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IN THE MATTER OF: )  
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LESTER SYKES, ) Docket No. TSCA-05-2008-0013  
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Respondent. )

ORDER REMANDING CASE  
TO REGIONAL JUDICIAL OFFICER

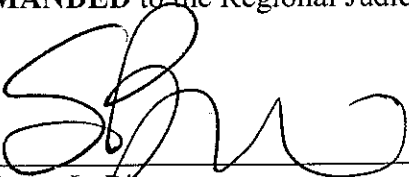
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Accordingly, this matter is hereby **REMANDED** to the Regional Judicial Officer for further adjudication.



Susan L. Biro  
Chief Administrative Law Judge

Dated: January 15, 2013  
Washington, D.C.

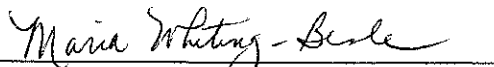
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In the Matter of Lester Sykes, Respondent  
Docket No. TSCA-05-2008-0013

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Chicago, IL 60604-3590

Mary T. McAuliffe, Esquire  
Associate Regional Counsel  
U.S. EPA  
Mail Code C-14J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
LESTER SYKES, ) DOCKET NO. TSCA-05-2008-0013  
Respondent. )

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2013 JAN 15 AM 11:53

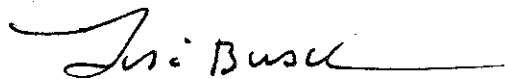
ORDER RETURNING CASE TO CHIEF ADMINISTRATIVE LAW JUDGE  
AND REPORT RECOMMENDING TERMINATION  
OF ALTERNATIVE DISPUTE RESOLUTION PROCESS  
AND RETURN OF CASE TO REGIONAL JUDICIAL OFFICER

As you previously have been notified, the January 2, 2013 Order of the Chief Administrative Law Judge designated the undersigned as a neutral in the Alternative Dispute Resolution ("ADR") process in the above-captioned matter.

However, no settlement of this case can be achieved unless the Respondent has been served with the Complaint. See, 40 C.F.R. §22.18(b). On August 31, 2012, the Regional Judicial Officer issued an Order Denying Motion for Default ("August 31 Order") on the basis that the Complaint in this matter, filed on June 26, 2008, was not served in accordance with applicable procedural rules and did not meet requirements of due process. The August 31 Order also stated that Respondent had not filed an answer to the Complaint or a response to the motion for default. On November 8, 2012, three months after the August 31 Order was issued, counsel for Complainant, Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5, filed with the Regional Hearing Clerk documents entitled "Filing of Certification of Service and Filing of Proof of Service of Complaint" and "Filing of Answer." However, the case file does not indicate that any motion for interlocutory appeal or reconsideration of the August 31 Order was made, or that, since the August 31 Order, any ruling was issued as to service of the Complaint. The rulings in the August 31 Order remain in force.

Therefore, this case must be returned to the Chief Administrative Law Judge. The recommendation of this Report is

that the ADR process be terminated, and that this case be returned to the Regional Judicial Officer.

A handwritten signature in cursive script, reading "Lisa Buschmann", written over a horizontal line.

M. Lisa Buschmann  
Administrative Law Judge

Dated: January 14, 2013

In the Matter of Lester Sykes, Respondent  
Docket No. TSCA-05-2008-0013

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Returning Case to Chief Administrative Law Judge and Report Recommending Termination of Alternative Dispute Resolution Process and Return of Case to Regional Judicial Officer**, dated January 14, 2013, was sent this day in the following manner to the addressees listed below.

  
Knolyn R. Jones  
Staff Assistant

Dated: January 14, 2013

Original And One Copy To:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900 L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Copy By Regular Mail To:

Mary T. McAuliffe, Esquire  
Associate Regional Counsel  
U.S. EPA  
Mail Code C-14J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of )  
LESTER SYKES, ) DOCKET NO. TSCA-05-2008-0013  
Respondent. )

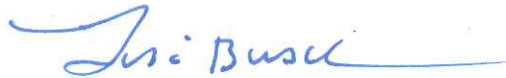
ORDER RETURNING CASE TO CHIEF ADMINISTRATIVE LAW JUDGE  
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Therefore, this case must be returned to the Chief Administrative Law Judge. The recommendation of this Report is

that the ADR process be terminated, and that this case be returned to the Regional Judicial Officer.



---


M. Lisa Buschmann  
Administrative Law Judge

Dated: January 14, 2013

In the Matter of Lester Sykes, Respondent  
Docket No. TSCA-05-2008-0013

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Associate Regional Counsel  
U.S. EPA  
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Chicago, IL 60604-3590

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ 2013 JAN -2 AM 11:07

In the Matter of:

Lester Sykes,

Respondent

)
Docket No. TSCA-05-2008-0013

ORDER INITIATING ALTERNATIVE DISPUTE RESOLUTION PROCESS AND APPOINTING NEUTRAL

Pursuant to the request of the parties, Judge M. Lisa Buschmann, 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.
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 4, 2013.
4. A party requesting termination of this process shall so advise the assigned neutral Judge either orally or in writing.

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.

6. Please note that pursuant to an official EPA pilot program, rather than filing all documents with the Regional Hearing Clerk as specified in 40 C.F.R. § 22.5(a), **all documents and correspondence filed in this matter shall be filed with the Headquarters Hearing Clerk** at the following address: Sybil Anderson, Headquarters Hearing Clerk, Office of Administrative Law Judges, 1200 Pennsylvania Avenue, N.W., Mail Code 1900L, Washington, D.C. 20460. If filings are sent by commercial carriers, such as UPS and Fedex, or hand-delivered, the following physical address should be used: 1099 14<sup>th</sup> Street, N.W., Suite 350W, Washington, D.C. 20005. The Regional Hearing Clerk may properly reject any documents that a party attempts to file in the Regional Office while this matter is before the Administrative Law Judge.



---

Susan L. Biro  
Chief Administrative Law Judge

Dated: January 2, 2013  
Washington, DC



In the Matter of Lester Sykes, Respondent  
Docket No. TSCA-05-2008-0013

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Initiating Alternative Dispute Resolution Process And Appointing Neutral**, dated January 2, 2013, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: January 2, 2013

Original And One Copy To:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900 L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Copy By Regular Mail To:

Mary T. McAuliffe, Esquire  
Associate Regional Counsel  
U.S. EPA  
Mail Code C-14J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ 2013 JAN -2 AM 11:07

In the Matter of:

Lester Sykes,

Respondent

)
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)
)
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)

Docket No. TSCA-05-2008-0013

ORDER INITIATING ALTERNATIVE DISPUTE RESOLUTION PROCESS AND APPOINTING NEUTRAL

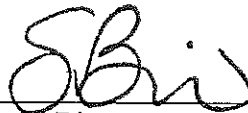
Pursuant to the request of the parties, Judge M. Lisa Buschmann, is hereby designated as a neutral to initiate and conduct such processes as may facilitate a settlement of this proceeding.

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 4, 2013. 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.

6. Please note that pursuant to an official EPA pilot program, rather than filing all documents with the Regional Hearing Clerk as specified in 40 C.F.R. § 22.5(a), **all documents and correspondence filed in this matter shall be filed with the Headquarters Hearing Clerk** at the following address: Sybil Anderson, Headquarters Hearing Clerk, Office of Administrative Law Judges, 1200 Pennsylvania Avenue, N.W., Mail Code 1900L, Washington, D.C. 20460. If filings are sent by commercial carriers, such as UPS and Fedex, or hand-delivered, the following physical address should be used: 1099 14<sup>th</sup> Street, N.W., Suite 350W, Washington, D.C. 20005. The Regional Hearing Clerk may properly reject any documents that a party attempts to file in the Regional Office while this matter is before the Administrative Law Judge.



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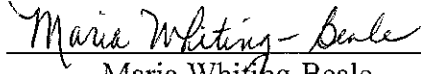
Susan L. Biro  
Chief Administrative Law Judge

Dated: January 2, 2013  
Washington, DC

In the Matter of Lester Sykes, Respondent  
Docket No. TSCA-05-2008-0013

CERTIFICATE OF SERVICE

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Maria Whiting-Beale  
Staff Assistant

Dated: January 2, 2013

Original And One Copy To:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900 L  
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Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628



Lester Sykes, Docket No. TSCA-05-2008-0013  
Mary McAuliffe to: Maria Whiting-Beale  
Cc: Julie Morris

RECEIVED BY OALJ

2013 JAN -2 AM 7:52

12/26/2012 04:27 PM

From: Mary McAuliffe/R5/USEPA/US  
To: Maria Whiting-Beale/DC/USEPA/US@EPA  
Cc: Julie Morris/R5/USEPA/US@EPA

Ms. Whiting-Beale,

I am responding to Chief Administrative Law Judge Biro's December 13, 2012 letter on behalf of Complainant, the U.S. Environmental Protection Agency, Region 5, in the matter of Lester Sykes, Docket No. TSCA-05-2008-0013.

Complainant is willing to accept the Office of Administrative Law Judges' offer of administrative dispute resolution (ADR) as outlined in Chief Administrative Law Judge Biro's December 13, 2012 letter.

Mr. Lester Sykes is the respondent in this matter.

If you need any further information, please let me know. Thank you.

Mary T. McAuliffe  
Associate Regional Counsel  
U.S. EPA, Region 5  
phone: (312) 886-6237  
email: [mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov)



ALTERNATIVE DISPUTE RESOLUTION

Catherine Sykes

to:

Maria Whiting-Beale

12/26/2012 12:20 PM

Hide Details

From: Catherine Sykes <csykes29@yahoo.com>

To: Maria Whiting-Beale/DC/USEPA/US@EPA

RECEIVED BY OALJ  
2013 JAN -2 AM 7:52

I will participate in the ALTERNATIVE DISPUTE RESOLUTION. DOCKET # TSCA-05-2008-0013.

LESTER SYKES PHONE # 1- 773- 370-4173 (cell) Or 1-773-821-9217 (home #).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

December 13, 2012

OFFICE OF  
THE ADMINISTRATIVE  
LAW JUDGES

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628

RECEIVED BY OALJ  
2012 DEC 13 AM 9:16

Re: Lester Sykes  
Docket No. TSCA-05-2008-0013

Dear Mr. Sykes:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of adjudicative cases. Please inform my legal staff assistant, Maria Whiting-Beale by **December 27, 2012**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be 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 will be entirely voluntary and completely confidential; both of these points, together with general procedures, are reviewed below.

Voluntary. Both EPA and Respondent(s) must elect to participate in ADR. The choice to use or not to use ADR does not prejudice either party. If ADR is utilized, either party may terminate the ADR process at any time.

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' ADR communications.

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 the parties to establish procedures. The parties are encouraged to discuss their expectations of the ADR process with the neutral Judge. As a general practice, our Office offers mediation as the method of ADR. The neutral Judge, as mediator, hears each party's position and arguments, either in writing, orally or both, may ask the parties questions, may request the parties submit documents or other information, 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. At the parties' request, the neutral 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 neutral Judge. If the neutral Judge does offer an opinion, the parties may elect to discuss it with the neutral Judge separately or in conjunction with the other party or parties.

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

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Very truly yours,



---

Susan L. Biro  
Chief Administrative Law Judge

cc: Mary T. McAuliffe, Esquire  
Sybil Anderson, Headquarters Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

December 13, 2012

Mr. Lester Sykes  
200 East 96<sup>th</sup> Street  
Chicago, IL 60628

Re: Lester Sykes  
Docket No. TSCA-05-2008-0013

OFFICE OF  
THE ADMINISTRATIVE  
LAW JUDGES

RECEIVED BY OALJ  
2012 DEC 13 AM 9:16

Dear Mr. Sykes:

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Voluntary. Both EPA and Respondent(s) must elect to participate in ADR. The choice to use or not to use ADR does not prejudice either party. If ADR is utilized, either party may terminate the ADR process at any time.

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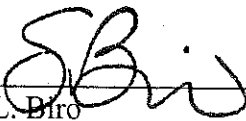
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Very truly yours,

  
\_\_\_\_\_  
Susan L. Biro  
Chief Administrative Law Judge

cc: Mary T. McAuliffe, Esquire  
Sybil Anderson, Headquarters Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

December 13, 2012

OFFICE OF  
THE ADMINISTRATIVE  
LAW JUDGES

Mary T. McAuliffe, Esquire  
Associate Regional Counsel  
U.S. EPA  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Re: Lester Sykes  
Docket No. TSCA-05-2008-0013

RECEIVED BY OALJ  
2012 DEC 13 AM 9:16

Dear Ms. McAuliffe:

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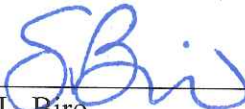
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Susan L. Biro  
Chief Administrative Law Judge

cc: Mr. Lester Sykes  
Sybil Anderson, Headquarters Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

December 13, 2012

OFFICE OF  
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U.S. EPA  
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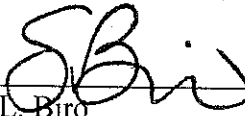
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