



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

August 16, 2017

Benjamin M. Cohan, Esq.  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Mail Code 3RC43  
Philadelphia, PA 19103-2029  
*By email only to cohan.benjamin@epa.gov*

**RE: Invitation to participate in mediation for settlement of case  
In the Matter of *August Mack Environmental, Inc.*  
Docket No. CERCLA-HQ-2017-0001**

Dear Mr. Cohan:

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 cases pending before the Office. Please inform an Attorney-Advisor for this Tribunal, Jennifer Almase, by **August 30, 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 August 30, 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](mailto: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:

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- (1) your name and phone number;
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- (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.

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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,

---

Susan L. Biro  
Chief Administrative Law Judge

cc: Aaron F. Tuley, for August Mack Environmental, Inc.  
Bradley R. Sugarman, for August Mack Environmental, Inc.  
Mary Angeles, Headquarters Hearing Clerk, OALJ  
Michael B. Wright, Attorney-Advisor, OALJ



**UNITED STATES  
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August 16, 2017

Aaron F. Tuley  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204-2079  
*By email only to atuley@kdlegal.com*

**RE: Invitation to participate in mediation for settlement of case  
In the Matter of *August Mack Environmental, Inc.*  
Docket No. CERCLA-HQ-2017-0001**

Dear Mr. Tuley:

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cc: Benjamin M. Cohan, for EPA  
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August 16, 2017

Bradley R. Sugarman  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204-2079  
*By email only to bsugarman@kdlegal.com*

**RE: Invitation to participate in mediation for settlement of case  
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