



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
New York State) Docket No. CWA-02-2016-3403
Department of Transportation,)
)
Respondent.)

SUPERSEDING HEARING NOTICE AND ORDER

A Hearing Order was issued in this case on September 12, 2017, which scheduled the hearing to begin on October 31, 2017. Because that schedule conflicted with an order granting an extension issued by the previous judge, I am hereby issuing this Superseding Hearing Notice and Order. The parties may disregard the previous Hearing Order.

Pursuant to the procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22, I am responsible for scheduling the hearing and determining an appropriate location for the hearing, consistent with 40 C.F.R. §§ 22.21 and 22.19(d). I am also responsible for regulating the course of the hearing consistent with 40 C.F.R. § 22.4. Accordingly, prehearing filing deadlines and the hearing in this matter are scheduled as follows:

Settlement Status Reports. Complainant is directed to file Status Reports as to the status of any settlement negotiations between the parties, *which shall not include any specific terms of settlement*, on or before **October 31, 2017**, and on or before **December 8, 2017**.

Supplements to Prehearing Exchange. An addition of a proposed witness or exhibit to the prehearing exchange may be filed without an accompanying motion until 60 days before the hearing is scheduled to commence. Thereafter a motion shall be required. Notwithstanding the deadline set forth in 40 C.F.R. § 22.22(a)(1), if a party fails to supplement their prehearing exchange by **December 15, 2017**, the document, exhibit, or testimony shall not be admitted into evidence unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so. Motions to supplement the prehearing exchange filed after **January 1, 2018**, will not be considered absent extraordinary circumstances. A document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify.

Joint Stipulations. On or before **December 22, 2017**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after an evidentiary hearing.

Prehearing Motions. All non-dispositive prehearing motions, such as motions for subpoenas or motions in limine, must be filed on or before **November 16, 2017**.

Prehearing Briefs. The parties may, if they wish, file prehearing briefs on or before **December 29, 2017**. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondent's brief should identify each of the defenses Respondent intends to pursue at the hearing.

Prehearing Conference. A prehearing conference will be scheduled in advance of the hearing and conducted by a staff attorney.

Hearing. The hearing in this matter shall begin promptly at **9:00 a.m.** on **Tuesday, January 16, 2018**, and shall continue if necessary through Tuesday, January 23, 2018, at the following location:

**James T. Foley Courthouse
Suite 509
445 Broadway
Albany, NY 12207**

Individuals requiring special accommodations at the hearing, including wheelchair access and translation services, must contact Mary Angeles, Headquarters Hearing Clerk, at (202) 564-6281, no later than 30 days prior to the scheduled hearing, so that appropriate arrangements can be made. A staff attorney for the undersigned, Ryan D. Yaeger, can be contacted should you have any procedural questions or questions about what to expect at the hearing, at (202) 564-4898 or yaeger.ryan@epa.gov.

RESPONDENTS ARE ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE HAVING BEEN SHOWN, MAY RESULT IN THE ENTRANCE OF DEFAULT JUDGMENT AGAINST THEM.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING, OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Date: September 14, 2017
Washington, D.C.

In the Matter of *New York State Department of Transportation*, Respondent.
Docket No. CWA-02-2016-3403

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Superseding Hearing Notice and Order**, issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Ryan D. Yaeger
Staff Attorney

Original and One Copy by Hand Delivery to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic Mail to:

Christopher Saporita, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007
Email: saporita.chris@epa.gov
For Complainant

Copy by Electronic Mail to:

Alicia McNally, Esq.
Assistant Counsel
Division of Legal Affairs
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232
Email: Alicia.McNally@dot.ny.gov
For Respondent

Dated: September 14, 2017
Washington, D.C.