

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

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

**SUPPLEMENTAL JOINT PARTIAL MOTION TO CONFORM THE HEARING  
TRANSCRIPT AND JOINT MOTION FOR EXTENSION OF TIME TO FILE POST-  
HEARING BRIEFS**

**A. Supplemental Joint Partial Motion to Conform the Hearing Transcript**

An administrative hearing in the above-captioned matter was held from April 3-5, 2018, in Albany, New York. An electronic copy of the transcript of the testimony given during that hearing was received by counsel for the parties on May 10, 2018. On that same date, this tribunal issued an Order Scheduling Post-Hearing Submissions, which provided that upon review, and pursuant to 40 C.F.R. § 22.25, any party could file a motion to conform the transcript to the actual hearing testimony by June 11, 2018.<sup>1</sup> Upon subsequent joint motions of the parties, and per this tribunal’s June 14, 2018 Order Granting Second Joint Motion for Extension of Time, that deadline was ultimately extended to June 22, 2018. On June 22, 2018, the parties jointly moved for over 679 corrections to the 290-page transcript, Complainant separately moved for 11 additional corrections and Respondent separately moved for 21 additional corrections.

On July 10, this tribunal sent the parties audio recordings for most, but not all, of the hearing, with instructions to attempt to agree to additional stipulations for the separately proposed corrections. After reviewing the transcripts, the parties have agreed to stipulate to corrections for 24 of the 32 separately proposed corrections. For the remaining 8 corrections, because the audio recordings are either missing or provide no additional clarification, Complainant continues to rely on the corrections proposed in its June 22 separate motion.

Therefore, in order to ensure that the record in this proceeding comports with 40 C.F.R. § 22.25 and contains a “verbatim” transcript of the testimony provided during the administrative hearing held in the above-captioned matter, the parties respectfully request that their Supplemental Joint Partial Motion to Conform the Hearing Transcript in this proceeding be GRANTED in each of the respects set forth below:

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<sup>1</sup> 40 C.F.R. § 22.25 provides, in relevant part, that the testimony in an administrative hearing conducted pursuant to the Consolidated Rules of Practice “shall be transcribed verbatim.”

Page	Line	Correction
327	15-17	Delete "you must ask for the Facts of Communication."
345	3	Keep "as afforded to"
374	1-3	Replace answer with "When you say, 'did not do' ... since we got the action we took the enforcement action, we did not refile"
382	16	Change "as we actively know" to "asleep at the wheel"
387	9	Change "stormwater erosion" to "municipal stormwater management"
442	11	Change "extraordinary" to "preliminary"
442	12	Change "photographic" to "topographic"
445	19	Keep original transcript text.
465	14	Keep original transcript text.
465	14	Keep original transcript text.
466	14	Keep original transcript text.
471	13-14	Change "We would require for them to prepare what we have in DOT" to "We were required to prepare, again, what we in DOT."
471	18	Delete "to them" after "submitted"
471	22-23	Insert "something we were already following" after "our program directly, telling them to follow"
472	14	Insert ", bid specifications, requests for proposals, " after "tenant lease agreements"
472	17	Keep original transcript text.
474	19	Keep original transcript text.
476	22	Delete "a -- in the middle of the year"
477	14	Change "dates it prior to" to "And did that database exist prior to the audit?"
485	13	Change "exhibit" to "submission"
487	4	Change "payment solution" to "information"
487	5	Change "number" to "numbers"
493	7	Change "at least" to "every"
493	8	Keep original transcript text.

**B. Joint Motion for Extension of Time to File Post-Hearing Briefs**

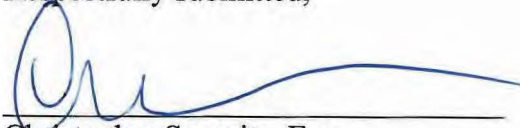
Pursuant to 40 C.F.R. § 22.7(b), “[t]he ... Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties ...” Judge Biro's May 10, 2018 Order Scheduling Post-Hearing Submissions, among other things, sets deadlines for the parties' filing of post-hearing briefs. Those deadlines were thrice extended by Judge Biro for good cause, most recently in her June 13, 2018 Order Granting Second Motion for Extension of Time. The next deadline is for Complainant’s Initial Post-Hearing Brief, on July 27, 2018.

As the parties have noted in their previous motions for extension, and as described further, above, the review and correction of the transcript in this matter has been especially difficult, given extremely poor transcription on one of the three days and the poor quality and incompleteness of the audio recording. As a result, the parties have had to continue to dedicate significant time to conforming the transcript, including preparation of this supplemental motion, which has continued to delay completion of their post-hearing briefs. Therefore, pursuant to 40

C.F.R. § 22.7(b), upon timely motion, for good cause shown, and on behalf of the parties in this matter, the parties respectfully request that their Joint Motion for Extension of Time to File Post-Hearing Briefs be GRANTED as described below:

<u>Document</u>	<u>Current Due Date</u>	<u>Proposed Due Date</u>
Complainant's Initial Post-Hearing Brief:	July 27, 2018	August 3, 2018
Respondent's Initial Post-Hearing Brief:	August 31, 2018	September 7, 2018
Complainant's Reply Brief:	September 21, 2018	September 28, 2018
Respondent's Reply Brief:	October 12, 2018	October 19, 2018

Respectfully submitted,



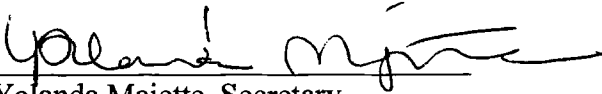
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Dated: July 23, 2018  
New York, NY

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

**CERTIFICATION OF SERVICE**

I hereby certify that the foregoing Supplemental Joint Partial Motion to Conform the Hearing Transcript and Joint Motion for Extension of Time to File Post-Hearing Briefs, dated July 23, 2018, was sent this day to the following parties in the manner indicated below.

  
Yolanda Majette, Secretary

Original and One Copy by OALJ E-Filing System to:

Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Mail Code 1900R  
Washington, DC 20460

Copy by Certified Mail to:

Alicia McNally, Esq.  
Assistant Counsel  
Division of Legal Affairs  
New York State Department of Transportation  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, NY 12232  
*For Respondent*

Dated: July 23, 2018  
New York, NY