

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

In the Matter of:)	
)	
August Mack Environmental, Inc.,)	Docket No. CERCLA-HQ-2017-0001
)	
Requestor.)	

REQUEST FOR PREHEARING CONFERENCE

Pursuant to 40 C.F.R. § 305.26, Requestor August Mack Environmental, Inc. (“AME”) respectfully requests that the Presiding Officer set a prehearing conference in this matter and direct the parties and their counsel or other representative to appear at such conference. In support thereof, AME states as follows:

1. AME initially submitted a Request for Hearing (“Hearing Request”) to various Agency offices on March 9, 2017. The Hearing Request was officially referred to this Tribunal by the Agency on August 16, 2017.
2. On August 16, 2017, the Agency filed its Answer to the hearing request as well as a Motion to Dismiss AME’s claim against the Fund.
3. On December 18, 2017, the ALJ granted the motion to dismiss.
4. On January 17, 2018, AME filed a complaint in the United States District Court for the Northern District of West Virginia, requesting review of the ALJ decision pursuant to 42 U.S.C. § 9612(b)(5).

5. The Agency filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). On July 11, 2019, the District Court granted the motion to dismiss.

6. On August 29, 2019, AME appealed the District Court's decision to the United States Court of Appeals for the Fourth Circuit.

7. On January 7, 2021, the Fourth Circuit entered a judgment vacating the decision of the district court and remanding the case to the district court "for such other and further proceedings as may be appropriate, including a remand to the EPA for further administrative proceedings." See *August Mack Environmental, Inc. v. United States Environmental Protection Agency*, 841 F. App'x 517, 524-25 (4th Cir. 2021).

8. On August 3, 2021, the United States District Court for the Northern District of West Virginia granted the Parties' Joint Motion for Remand to the EPA, and ordered that this matter be "remanded to EPA Chief Administrative Law Judge Susan L. Biro for further proceedings consistent with the January 7, 2021 *per curiam* opinion of the U.S. Court of Appeals for the Fourth Circuit.

ACCORDINGLY, Requestor August Mack Environmental, Inc. ("AME") respectfully requests that the Presiding Officer set a prehearing conference in this matter and direct the parties and their counsel or other representative to appear at such conference.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2021 a copy of the foregoing document was e-filed, and that a copy was sent by U.S. Mail and electronic mail (e-mail) to the addresses listed below:

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<p>Chief Judge Susan L. Biro U.S. Environmental Protection Agency Office of Administrative Law Judges Ronald Reagan Building, Rm. M1200 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20004 Biro.susan@epa.gov</p>	<p>Mary Angeles, Hearing Clerk U.S. Environmental Protection Agency Office of Administrative Law Judges Ronald Reagan Building, Rm. M1200 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20004 Angeles.mary@epa.com</p>
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Respectfully submitted,



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