



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2852**

VIA E-FILING

November 16, 2022

The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. EPA, Office of Administrative Law Judges
Ronald Reagan Building, Room M1 200
1300 Pennsylvania Avenue, NW
Washington, DC 20004

Re: August Mack Environmental, Inc. (AME)
Docket No. CERCLA-HQ-2017-0001

Dear Judge Biro,

On behalf of the United States Environmental Protection Agency (EPA), I enclose for your consideration the "EPA's Response in Opposition to Requestor's Motion for Remote Hearing on Motions for Accelerated Decisions and Motion to Strike." According to past practice before this Tribunal, my understanding is that a Proposed Order is not necessary.

Respectfully submitted,

Benjamin M. Cohan
Sr. Assistant Regional Counsel

Enclosures

cc: Bradley Sugarman @ bsugarman@boselaw.com
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Paul Leonard, Region III Claims Officer
Elizabeth G. Berg (OGC)



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

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

**EPA’S RESPONSE IN OPPOSITION TO REQUESTOR’S MOTION FOR REMOTE
HEARING ON MOTIONS FOR ACCELERATED DECISIONS AND MOTION TO
STRIKE**

Pursuant to 40 C.F.R. Part 305, the United States Environmental Protection Agency (“EPA”) hereby files this Response in Opposition to August Mack Environmental, Inc. (“AME’s”) Motion for Remote Hearing on Motion for Accelerated Decision and Motion to Strike filed on November 11, 2022 (“Motion for Hearing”). In support of this Response, EPA states as follows:

1. Oral argument on these issues is not necessary, as AME has had ample opportunity to carefully and exhaustively comb through the record and identify what it believes is the relevant information and law that will elucidate the merits of its position on the pre-defined scope of this adjudication.
2. EPA respectfully submits that oral argument would not be helpful to assist the Tribunal in resolving the narrow issue before it on remand, which is whether

AME substantially complied with seeking preauthorization. Discovery did not elicit any disputed material facts relevant to whether AME did so. Although AME has improperly sought to introduce several new issues, like the validity of EPA's preauthorization regulations, EPA's written advocacy clearly establishes why those are jurisdictionally and procedurally barred. Likewise, there is no need for oral argument on AME's Motion to Strike EPA's Exhibits, as the legal standard is unambiguous and does not warrant oral argument.¹

3. In light of the above, it is not necessary for this Tribunal to exercise its discretion to conduct oral argument on these motions. 40 C.F.R. 305.23(c).

Conclusion

For the reasons stated above, EPA requests that this Tribunal deny AME's request for oral argument pursuant to her authority under § 305.23(c).

Respectfully submitted,

Date

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¹ AME's Motion for Hearing was filed before EPA had an opportunity to file its Reply to AME's Response to EPA's Motion for Accelerated Decision and its Response in Opposition to AME's Motion to Strike EPA's Exhibits.

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For the Agency

CERTIFICATE OF SERVICE

I certify that the foregoing EPA’s Response in Opposition to Requestor’s Motion for Remote Hearing on Motions for Accelerated Decisions and Motion to Strike *In the of Matter of August Mack Environmental, Inc.*, Docket No. CERCLA-HQ-2017-0001, was filed and served on the Chief Administrative Law Judge Susan L. Biro this day through the Office of Administrative Law Judge’s E-Filing System.

I also certify that an electronic copy of same was sent this day by e-mail to the following e-mail addresses for service on Requestor’s counsel: Bradley Sugarman @ bsugarman@boselaw.com; Philip Zimmerly @ pzimmerly@boselaw.com; and Jackson Schroeder @ jschroeder@boselaw.com.

Date

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