NEW YORK STATE | Department of Environmental Conservation

Office of Hearings and Mediation Services

PRACTICE SUGGESTIONS

LAST REVISED DECEMBER 2025

Table of Contents

I. Introduction

Persons appearing before an Administrative Law Judge (ALJ) in a proceeding conducted by the Department of Environmental Conservation's (DEC) Office of Hearings and Mediation Services (OHMS) should be familiar with, and must adhere to, the Uniform Enforcement Hearing Procedures (6 NYCRR Part 622) and Permit Hearing Procedures (6 NYCRR Part 624) – depending on which type of proceeding is being conducted. The following items are suggestions for persons appearing and practicing before an ALJ in an OHMS proceeding.

These suggestions are instructive and explanatory in nature and have no legal effect. OHMS and individual ALJs assigned to a proceeding reserve the right to act at variance with these suggestions at their discretion. Additional direction on these practice suggestions based on the individual facts and circumstances of the proceeding may be provided from time to time by the assigned ALJ.

II. Proceeding Formalities

All persons should recognize that every type of virtual appearance before a DEC ALJ is a formal proceeding and is no different in sum or substance from an in-person appearance before an ALJ.

Persons attending DEC virtual proceedings conducted by OHMS should use their best efforts to eliminate all visual and auditory distractions. Persons may display their actual backgrounds (if professional and dignified), a blurred background, or an appropriate virtual background.

If appearing virtually before an ALJ, all persons should have a working video and audio system and should situate themselves in such a manner as to be seen by the ALJ at all times. Persons should begin to log on 10 minutes before the appearance to ensure adequate time to address any technical issues. All persons should mute their audio, unless they are speaking or about to speak.

All persons appearing before an ALJ should observe the formalities of a courtroom, including by appearing in appropriate dress and by not driving a motor vehicle while attending a virtual hearing or conference.

For attorneys or others representing or appearing on behalf of parties (such as a consultant, etc.), "appropriate dress" for OHMS means professional business attire such as a business suit and tie; a collared dress shirt, jacket, and tie; a pantsuit or dress suit; a dress with a jacket; or comparable professional business attire.

III. Formatting Documents Filed with OHMS

Documents filed with OHMS should be:

- Formatted for a page size of 8-1/2″ by 11″, with margins of no less than one inch on all four sides;
- Produced with Times New Roman font and a font size no smaller than 11-point or its equivalent;
- Contain page numbers; and
- Be in searchable (OCR) PDF format, if possible.

IV. Exhibits

The overall goal of these suggestions is to facilitate the preparation and submission of exhibits that are easy to cite and understand.

- Affidavits, affirmations, and testimony should adequately describe the exhibit
- When filing papers, exhibits should only be introduced by, and attached to, an affirmation or affidavit. Exhibits should be prepared as a document separate from affidavits, affirmations, and pre-filed testimony (if any).
    - Exhibits should also be separate documents from each other
- Exhibit pages should be double-sided and numbered
    - Exception: photos and spreadsheets should be single-sided
- For spreadsheets, headings for columns should be located and printed on every page
- To the extent possible, exhibits should be in searchable (OCR) PDF format
- If an exhibit consists of a drawing, map, plan, or other information that is difficult to reproduce, parties should consult with the presiding ALJ regarding the formatting requirements
- Photos should be in color and labelled with date, time, and name of photographer. A brief description of each photo and general location where each photo was taken should be included on the photo page as well. General location means: (i) the physical street address; and (ii) general area on the site/facility/property.
- For Part 622 enforcement proceedings, DEC staff exhibits should be identified by numbers and respondent exhibits should be identified by letters
- For Part 624 permit proceedings, all exhibits should be identified by a number and initials of the sponsoring witness

    - E.g., Witness Smokey Bear's first exhibit would be marked "Exhibit SB-1", and their second exhibit would be "Exhibit SB-2." For exhibits with multiple sponsoring witnesses, would be marked "Exhibit Staff Panel-1", "Exhibit Applicant Panel-1", "Exhibit Petitioner's Panel-1", or "Exhibit Applicant Wetlands Panel-2."
- Each exhibit should include: (i) a separate cover sheet clearly marked "Exhibit 1", etc. or (ii) be tabbed
    - For motion and pleading exhibits, it's preferred they be tabbed
    - Note: cover sheets are not needed for exhibits introduced at hearing
- If there are multiple photos or attachments in one exhibit, they should properly be labeled as "Exhibit 1a" or "Exhibit 3, Attachment 1"
- You should consult with other parties prior to hearing and attempt to agree upon the exhibits that will be offered into evidence without objection. For those exhibits to which no objection has been or will be made, each party should pre-mark its exhibits into evidence.
- You should provide an exhibit list, including an indication of those exhibits to which no objection has been made, to the ALJ prior to hearing according to the deadline set by the ALJ

V. Exhibit Checklist

- ✓ Exhibits adequately described in affidavit, affirmation, or testimony
- ✓ Separate document
- ✓ Double sided
    - If a photo or spreadsheet – single sided
- ✓ Page numbers
- ✓ Proper identification and label
- ✓ Searchable (OCR) PDF format, if possible
- ✓ Cover sheet or tabbed
- ✓ Photos
    - Single-sided
    - In color
    - Labelled with date, time, and name of photographer
    - A brief description of the photo
    - General location where the photo was taken
        - Street address of site
        - General area on the site
- ✓ If a spreadsheet, headings for columns are located on each page

VI. Notifications Regarding Parallel Litigation

It is possible that parallel litigation regarding a project, facility, or enforcement action pending with DEC occurs within the State or federal judicial system simultaneously with a proceeding before OHMS or that may affect a proceeding pending before OHMS.

Parties should notify the ALJ assigned to the OHMS proceeding of any milestones in parallel litigation, including decisions and orders by the respective court, as soon as practicable. Notification to the ALJ should be in writing to all parties to the DEC proceeding and should attach a copy of such milestone but should not include substantive commentary. If the ALJ schedules a

conference or directs an action in light of such parallel litigation milestone, parties may provide a substantive commentary and a position upon the assigned ALJ's inquiry as appropriate.

VII. Notifications Regarding Settlements

It is possible that settlement negotiations may continue between parties after the matter has been referred to OHMS but prior to issuance of a Commissioner Order or final disposition of the proceeding. If there is an agreed upon settlement, parties must notify the assigned ALJ or, if there is no assigned ALJ, the Chief ALJ, as soon as practicable and within five (5) days of execution of the stipulation (6 NYCRR 622.18[c] and 624.13[d]). Notification to the ALJ must be in writing to all parties and attach a copy of the agreed upon settlement (*id.*).

VIII. Meet and Confer

Before filing any motion related to discovery, the party intending to bring the motion must first make a good-faith effort to meet and confer with the other parties to try and resolve the issues which will or are likely to be raised by the motion. The motion must be accompanied by an affirmation describing the good faith efforts to resolve the dispute without resort to a motion (6 NYCRR 622.7 and 624.7). The parties need not meet in person to confer for this purpose. If a party desires to extend a deadline or request an adjournment in an OHMS proceeding, the party seeking to do so is also encouraged to meet and confer with the other parties before requesting such relief from the assigned ALJ. This meet and confer suggestion does not pertain to any other types of motions.

IX. Affirmations

The current 6 NYCRR Parts 622 and 624, specifically the regulatory definitions, consider that affirmations may only be executed by attorneys. New York Civil Practice Law and Rules (CPLR) 2106 and State Administrative Procedure Act (SAPA) 302(4) permit any person to submit an affirmation in lieu of an affidavit. The statutory language of CPLR 2106 and SAPA 302(4) is clear that it applies to administrative proceedings. In light of the foregoing, OHMS will accept affirmations from any person in lieu of an affidavit so long as the affirmation is in compliance with the statutory language of CPLR 2106 and SAPA 302(4). Note that any person may still use a notarized affidavit in OHMS proceedings if they prefer.

X. Contact Information

For further information about these practice suggestions contact the assigned ALJ, Chief ALJ, or OHMS.

Office of Hearings and Mediation Services
New York State Department of Environmental Conservation
625 Broadway, 1st Floor
Albany, NY 12233
Phone: 518-402-9003
ohms@dec.ny.gov