



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (ED)
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2009 JUN 25 PM 3:15

June 25, 2009

VIA OVERNIGHT MAIL

Stanley J. Margle, III, Esquire
Margle Law Offices, P.C.
3839 Easton Avenue
Bethlehem, PA 18020-1421

Re: Barnsley Square LP and Selvaggio Enterprises, Inc., Docket No. CAA-03-2008-0363

Dear Stan:

Enclosed, please find the final Consent Agreement and Consent Order resolving the above-referenced matter. Pursuant to the Consent Order, payment of the penalty plus interest shall be made within one year of the effective date of the Order. The effective date of the Order is the date on which the Order was filed with the Regional Hearing Clerk, in this case June 25, 2009.

Payment of the penalty shall be made as specified in paragraph 22 of the Consent Agreement. At the same time that any payment is made, mail copies of any corresponding check, or written notification confirming any electronic wire transfer to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to me at the above-referenced address. The written notification to the Regional Hearing Clerk and to me shall reference the above case caption and docket number.

Thank you for your cooperation in settling this matter. If you have any questions, you I can be reached at (215) 814-2607.

Sincerely,

A handwritten signature in cursive script that reads "Daniel E. Boehmcke".

Daniel E. Boehmcke
Senior Assistant Regional Counsel
EPA Region III

Enclosure

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street PH 315

Philadelphia, Pennsylvania 19103

IN RE:

Barnsley Square LP
623 Selvaggio, Dr.
Nazareth, PA 18064, and

Selvaggio Enterprises, Inc.
623 Selvaggio Dr., Suite 200
Nazareth, PA 18064,

Respondents

DOCKET NO: CAA-03-2008-0363

CONSENT AGREEMENT

I. Preliminary Statement

1. Pursuant to Section 113(a)(3) and (d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a)(3) and (d), the Director of the Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division) for the United States Environmental Protection Agency, Region III, initiated this administrative proceeding for the assessment of civil penalties against Barnsley Square, LP and Selvaggio Enterprises, Inc. (hereinafter collectively referred to as “Respondents”) by issuance of a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) dated June 30, 2008. The Complaint, incorporated herein by reference, alleges that the Respondents violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during an asbestos renovation project at a building and land known as the Country Roots property and located at 7065-A William Penn Hwy., Bethlehem, Northampton County, PA 18017 (the “Facility”). The Complaint was issued by the Director of the Land and Chemicals Division for the United States Environmental Protection Agency (“EPA”), Region III (“Complainant”).
 2. Respondents admit the jurisdictional allegations set forth in the Complaint and in this Consent Agreement.
 3. Respondents neither admit nor deny the factual allegations contained in the Complaint
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and in the Findings of Fact set forth in this Consent Agreement, except as provided in Paragraph 2, above.

4. Respondents neither admit nor deny the legal conclusions contained in the Complaint and in the Conclusions of Law set forth in this Consent Agreement, except as provided in Paragraph 2, above.
5. Respondents hereby expressly waive their respective rights to a hearing on any issue of fact or law set forth herein and waive their rights to appeal the attached Final Order.
6. Respondents consent to the issuance of the attached Final Order, hereinafter recited, and consent to the payment of the civil penalty in the amount and in the manner set forth therein.
7. Each party to this action shall pay its own costs and attorney fees.
8. This Consent Agreement and the accompanying Final Order (collectively, "CAFO") resolve only the civil claims which are alleged against Respondents in the Complaint, incorporated herein by reference. Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all the limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.
9. Complainant, the EPA and the United States reserve any and all rights and remedies available to them to enforce the provisions of this Consent Agreement and the attached Final Order, the Act, its implementing provisions and regulations, and of any other federal laws and/or regulations pursuant to which they have jurisdiction, following the entry of this Consent Agreement and the attached Final Order.
10. This Agreement shall apply to and be binding upon each Respondent, its officers, directors, trustees, successors and assigns.
11. Respondents herein certify to EPA that, upon investigation, to the best of its knowledge and belief, each is presently in compliance with the provisions of the Act and regulations promulgated thereunder pursuant to which violations were alleged against Respondents in the Complaint.
12. The settlement embodied in this Consent Agreement is based upon an analysis of Respondents' ability to pay a civil penalty. This analysis was based upon information

submitted to Complainant by Respondents. Each Respondent, by the signature of its responsible officer to this Consent Agreement, certifies that the information submitted by Respondents to EPA regarding their ability to pay is accurate and not misleading.

13. EPA shall have the right to reopen this Consent Agreement or to institute a new and separate action to recover civil penalties for the claims made in the Complaint in this matter if EPA obtains evidence that the information provided and/or representations made by Respondents are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

II. Findings of Fact

14. EPA incorporates by reference all factual allegations contained in the Complaint filed by EPA in this matter.

III. Conclusions of Law

15. EPA incorporates by reference all legal conclusions contained in the Complaint filed by EPA in this matter.
16. In view of the above incorporated Findings of Fact and Conclusions of Law, EPA concludes that Respondents failed to comply with the requirements of 40 C.F.R. §§ 61.145(b)(1), 61.145(c)(6)(1), 61.145(c)(8), and 61.150(b)(1) in violation of Section 112 of the Act, 42 U.S.C. § 7412, and on that basis, Respondents are liable to the United States for a civil penalty pursuant to Section 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d).

IV. Settlement Recitation

17. Complainant and Respondents enter into this Consent Agreement in order to fully settle and resolve all allegations set forth in the Complaint against Respondents without adjudication of any issue of law or fact.
18. In full settlement of any and all civil charges and allegations set forth in the Complaint against Respondents, and in consideration of each provision of this CAFO, Respondents consent to the assessment of a civil penalty of \$19,000 and consent to pay the civil penalty and any interest, if applicable, in the manner set forth below.
19. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the Clean Air Act Stationary Source Civil

Penalty Policy, Appendix III and the penalty assessment criteria in Section 113(e) of the Act, 42 U.S.C. § 7413(e), which includes the size of Respondents' respective businesses; the economic impact of the penalty on Respondents; Respondents' full compliance history and good faith efforts to comply; the duration of the violations; the seriousness of the violations; and the economic benefit of noncompliance.

20. Respondents agree not to deduct for federal tax purposes the civil penalty or any portion of the civil penalty specified in this CAFO.
21. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk of EPA Region III.
22. Payment of the penalty shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to Treasurer, United States of America and shall reference the above case caption and docket number.

All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000.

Overnight deliveries shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
ATTENTION: Natalie Pearson
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101.

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Payments through ACH (also known as REX or remittance express) shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

An on-line, internet payment option, is also available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter "sfo 1.1" in the search field. Open form and complete required fields.

At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Daniel E. Boehmcke, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029. This written notification to the Regional Hearing Clerk and Daniel E. Boehmcke shall reference the above case caption and docket number.

23. Respondents' failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of the accompanying Consent Agreement and this Final Order in the appropriate United States District Court. Additionally, Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in the assessment of additional interest, penalties and/or late payment penalty charges.

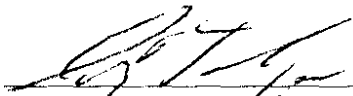
24. The following notice concerns interest and late payment penalty charges that will accrue if the civil penalty is not paid as directed.

Pursuant to 31 U.S.C. § 3717, an executive agency is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid as directed. 4 C.F.R. § 102.13(b). Interest will be assessed at the rate of the United States Treasury tax and loan rate. 4 C.F.R. § 102.13(c). In addition, a penalty charge of no more than six percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due. 4 C.F.R. § 102.13(e).


Thus, in accordance with the above provisions, to avoid the assessment of additional interest and handling charges on the penalty set forth herein, Respondents must pay the full amount of the civil penalty, plus accrued interest of five hundred seventy dollars (\$570.00) in the manner directed, within one year of the effective date of this CAFO. To avoid the assessment of penalty charges on the debt, Respondents must pay the full amount of the civil penalty, in the manner directed, within one year and ninety (90) days of the effective date of this CAFO.

The undersigned representatives of each Respondent certify that he/she is fully authorized to execute this Consent Agreement and to legally bind the respective Respondent to this Consent Agreement.

6-9-09
Date


Stephen F. Selvaggio
President
Selvaggio Enterprises, Inc.

6-9-09
Date


Stephen F. Selvaggio
Partner
Barnsley Square, LP

For Complainant:

6/17/09

Date

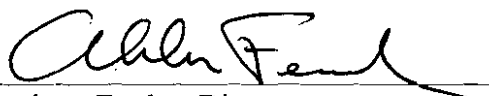


Daniel E. Boehmcke
Senior Assistant Regional Counsel
EPA Region III

Accordingly, the Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), United States Environmental Protection Agency, Region III, recommends that the Regional Judicial Officer issue the attached Final Order. The amount of the recommended civil penalty assessment is \$19,000.

6/22/09

Date



Abraham Ferdas, Director
Land and Chemicals Division
EPA Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Barnsley Square LP
623 Selvaggio, Dr.
Nazareth, PA 18064, and

Selvaggio Enterprises, Inc.
623 Selvaggio Dr., Suite 200
Nazareth, PA 18064,

Respondents

DOCKET NO: CAA-03-2008-0363

FINAL ORDER


The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW THEREFORE, pursuant to 40 C.F.R. Part 22 and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on the factors set forth in Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §7413, it is hereby ordered that Barnsley Square, LP and Selvaggio Enterprises, Inc. (hereinafter collectively referred to as "Respondents"), pay a civil penalty in the amount of nineteen thousand dollars (\$19,000), and all applicable interest as specified in paragraph 24 of the foregoing Consent Agreement. Payment of the aforesaid civil penalty shall be made within one year of the effective date of this Final Order. Respondents' payment of the civil penalty shall

constitute full and final satisfaction of the violations set forth in Paragraph 16 of the foregoing Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date: 6/25/09


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

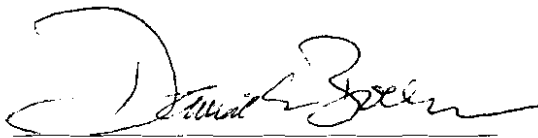
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed to the following persons via Federal Express overnight delivery:

Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900
401 M Street, S.W.
Washington, D.C. 20460

Stanley J. Margle, III, Esquire
Margle Law Offices, P.C.
3839 Easton Avenue
Bethlehem, PA 18020-1421

6/25/09
Date


Daniel E. Boehmcke
Senior Assistant Regional Counsel