UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
SUNRISE ELECTRONICS INC.,	)	Docket No. RCRA-05-2007-0013
	)	
	)	
Respondent.	)	

PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. This proceeding will be governed by the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22. 1 et seq., ("Rules of Practice"). The parties are advised to familiarize themselves with the applicable statues(s) and the Rules of Practice.

Agency policy strongly supports settlement and the procedures regarding documenting settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The parties are therefore commended for taking the initiative to attempt resolve this matter informally and expeditiously through the Alternative Dispute Resolution process. Although such process was unsuccessful, the parties are nevertheless directed to continue to discuss settlement to the upmost extent possible. In regard thereto, each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should also realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away.

Should a Consent Agreement not be finalized beforehand, the parties must prepare for hearing and shall strictly comply with the prehearing requirements of this Order.

This Order is issued pursuant to Section 22.19(a) of the Rules. Accordingly, it is directed that the following prehearing exchange take place between the parties:

(E) a copy of all documents supporting the truth of the allegations made in Paragraphs 43, 44, 45, 46 and 47 of the Complaint;

(F) a copy of all documents supporting the truth of the allegations made in Paragraphs 49, 50, 51, 52, and 53 of the Complaint;

(G) a copy of all documents supporting the truth of the allegations in Paragraphs 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 73, 74, 75, 82, 83, 90, 91, 92, 93, 94, 101, 102, 103, 104, 105, 112 and 113 of the Complaint;

(H) a copy of U.S. EPA's 2003 RCRA Civil Penalty Policy that was used or relied upon in calculating the proposed penalties;

(I) a copy of any penalty policy, *other than* the U.S. EPA's 2003 RCRA Civil Penalty Policy, that was used or relied upon in calculating the proposed penalties;

(J) a detailed explanation of the calculation of the economic benefit component of the proposed penalties as referenced in Complainant's Penalty Summary Sheet in Attachment A of the Complaint; and

(K) a statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.

3. The Respondent shall also submit the following as part of its Prehearing Exchange:

(A) for each and every paragraph in the Complaint as to which Respondent denied the accuracy of the allegations made therein including those made in Complaint Paragraphs 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 73, 74, 75, 82, 83, 90, 91, 92, 93, 94, 101, 102, 103, 104, 105, 112, and 113, provide a separate detailed narrative statement as to the factual and/or legal basis for the denial evidencing that such was made in good faith, and identify with specificity and provide copies thereof, of all documents, tangible items and/or testimony upon which Respondent is relying in regard to its denial of the truth of each such allegation; and

(B) if Respondent takes the position that proposed penalty should be reduced or eliminated on any grounds, such as "inability to pay," provide a detailed a narrative statement explaining the precise factual and legal basis for its position and a copy of any and all documents it intends to reply upon in support of such position.

4. Complainant shall submit as part of its Rebuttal Prehearing Exchange a statement and/or any documents in response to Respondent's Prehearing Exchange submittals as to provisions 3(A) and 3(B) above.

The prehearing exchanges called for above shall be filed in seriatim fashion, pursuant to the following schedule:

June 13, 2008	Complainant's Initial Prehearing Exchange
July 7, 2008	Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence
July 18, 2008	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. Therefore, each party should thoughtfully prepare its prehearing exchange. Any supplements to prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange.

The Complaint herein gave the Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554. In their Answer to the Complaint, the Respondent requested such a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, the Respondent has the right to defend against the Complainant's charges by way of direct evidence, rebuttal evidence or through cross-examination of the Complainant's witness. Respondent is entitled to elect any or all three means to pursue its defenses. If the Respondent intend to elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, the Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. **The Respondent is hereby notified that its failure to either comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of the Complainant's witnesses, can result in the entry of a default judgment against it.** The Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice. **THE MERE PENDENCY OF SETTLEMENT NEGOTIATIONS OR EVEN THE EXISTENCE OF A SETTLEMENT IN PRINCIPLE DOES NOT CONSTITUTE A BASIS FOR FAILING TO STRICTLY COMPLY WITH THE PREHEARING EXCHANGE REQUIREMENTS. ONLY THE FILING WITH THE HEARING CLERK OF A FULLY EXECUTED CONSENT AGREEMENT AND FINAL ORDER, OR ON AN ORDER OF THE JUDGE,**

EXCUSES NONCOMPLIANCE WITH FILING DEADLINES. The parties are advised NOT to include, attach or refer to any terms of settlement offers or agreements in any document submitted to the Presiding Judge, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the Presiding Judge except those that are fully executed and filed with the Regional Hearing Clerk.

Prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue. N.W.
Washington, D.C. 20460

Hand-delivered packages transported by Federal Express or any delivery service which x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, N.W., Suite 350, Washington, D.C. 20005.

Telephone contact may be made with my legal assistant, Maria Whiting-Beale at (202) 564-6259 or my staff attorney, Lisa Knight, Esquire at (202) 564-6291. The facsimile number is (202) 565-0044.

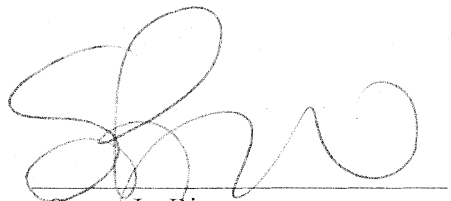
If any party wishes to receive, by e-mail or by facsimile, an expedited courtesy copy of decisions and substantive orders issued in this proceeding, this party shall submit a request for expedited courtesy copies by letter addressed to Maria Whiting-Beale, Legal Staff Assistant, Office of Administrative Law Judges, U.S. Environmental Protection Agency, Mail Code 1900 L, 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460. The letter shall include the case docket number, the e-mail address or facsimile number to which the copies are to be sent, and a statement as to whether the party requests: (A) expedited courtesy copies of the initial decision and/or any orders on motion for accelerated decision or dismissal, or (B) expedited courtesy copies of all decisions and substantive orders. The undersigned's office will endeavor to comply with such requests, but does not guarantee the party's receipt of expedited courtesy copies.

Prior to filing any motion, the moving party is directed to contact the other party or parties to determine whether the other party has any objection to the granting of the relief sought in the motion. The motion shall then state the position of the other party or parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted and no reliance should be placed on the granting of an unopposed motion. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response by the other party

and/or the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. Sections 22.16(b) and 22.7(c) of the Rules of Practice, 40 C.F.R. §§ 22.16(b) and 22.7(c), allow a fifteen-day response period for motions with an additional five days added thereto if the pleading is served by mail. Motions not filed in a timely manner may not be considered.

Furthermore, upon the filing of a motion, a response to a motion, or a reply to a motion, a party may submit a written request for an oral argument on the motion, pursuant to 40 C.F.R. § 22.16(d). Included in the request for oral argument shall be a statement as to the proposed appropriate location(s) for the argument to take place. The Office of Administrative Law Judges recently acquired access to the state of the art videoconferencing capabilities, and strongly encourages the parties to consider utilizing such technology for oral arguments on motions so as to minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

If either party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under 40 C.F.R. § 22.20 (a), it shall be filed **within thirty days after the due date for Complainant's Rebuttal Prehearing Exchange.**



Susan L. Biro
Chief Administrative Law Judge

Dated: May 1, 2008
Washington, D.C.

In the Matter of Sunrise Electronics Incorporated, Respondent
Docket No. RCRA-05-2007-0013

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated May 1, 2008, was sent this day in the following manner to the addressees listed below.

Maria Whiting-Beale
Staff Assistant

Dated: May 1, 2008

Original And One Copy By Pouch Mail To:

Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA
77 West Jackson Boulevard, E-13J
Chicago, IL 60604-3590

Copy By Pouch Mail To:

Erik H. Olson, Esquire
Associate Regional Counsel
U. S. EPA
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

Copy By Regular Mail To:

Patrick Joy, Esquire
Stone Pogrund & Korey, LLC
221 N. LaSalle Street, 32nd Floor
Chicago, IL 60601