



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
DATOM PRODUCTS, INC. ) DOCKET NO. CAA-03-2011-0055  
and WAYNE HIGHLANDS )  
SCHOOL DISTRICT, )  
 )  
RESPONDENTS )

PREHEARING ORDER

As you were previously notified, I have been designated by the April 7, 2011 Order of the Chief Administrative Law Judge to preside in the above-captioned matter. This proceeding arises under the authority of Sections 113(a)(3) and (d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3), (d), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The record reflects that the parties participated in the Alternative Dispute Resolution process offered by this office for two months but that they did not reach a settlement during that time. Accordingly, the parties shall strictly comply with the requirements of this Prehearing Order and prepare for hearing.

The parties are free to continue to engage in settlement discussions during and after preparation of their prehearing exchange. However, the parties are advised that extensions of time will not be granted absent a showing of good cause. The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failing to comply with the requirements or to meet the schedule set forth in this Order.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As

such, it is directed that the following prehearing exchange takes place:

1. Each party shall submit:
  - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness's expected testimony, or a statement that no witnesses will be called; and
  - (b) copies of all documents and exhibits it intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondent Datom's" or "Respondent Wayne's" exhibits, as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and
  - (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

See Sections 22.19(a), (b), and (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), and (d). See also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.
3. Respondents shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If either Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, that Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
4. Complainant shall submit 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.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchange delineated above shall be filed in *seriatim* manner, according to the following schedule:

- |               |   |
|---------------|---|
| June 2, 2011  | - Complainant's Initial Prehearing Exchange                                       |
| July 1, 2011  | - Respondents' Prehearing Exchange, including any direct and/or rebuttal evidence |
| July 15, 2011 | - Complainant's Rebuttal Prehearing Exchange (if necessary)                       |

In their respective Answers, the Respondents exercised their right under Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, to request a hearing in this matter. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) of the APA 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, each Respondent has the right to defend itself against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Each Respondent is entitled to elect any or all three means to pursue its defense.

If either Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, that Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement of election only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that e-mail correspondence with the undersigned is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The prehearing exchange information required by this Order to be sent to the undersigned, as well as any other further pleadings, shall be addressed as follows:

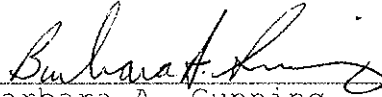
If sending by United States Postal Service (USPS):

EPA Office of Administrative Law Judges  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, DC 20460-2001

If sending by a non-USPS courier, such as UPS or Federal Express:

EPA Office of Administrative Law Judges  
1099 14th Street, NW  
Suite 350, Franklin Court  
Washington, DC 20005

Telephone contact may be made with my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.



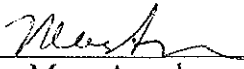
Barbara A. Gunning  
Administrative Law Judge

Dated: April 7, 2011  
Washington, DC

**In the Matter of *Datom Products, Inc., and Wayne Highlands School District*, Respondent.  
Docket No. CAA-03-2011-0055**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Prehearing Order**, issued by Barbara A. Gunning, Administrative Law Judge, dated the 7<sup>th</sup> day of April 2011, in CAA-03-2011-0055, were sent to the following parties on this 8<sup>th</sup> day of April 2011, in the manner indicated:

  
\_\_\_\_\_  
Mary Angeles  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Lydia Guy  
Regional Hearing Clerk  
U.S. EPA / Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Copy by Pouch Mail to:

Benjamin Cohan, Esq.  
Sr. Assistant Regional Counsel  
ORC, U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Copy by Regular Mail to:

David J. Gromelski, Esq.  
Wright & Reihner, PC  
148 Adams Avenue  
Scranton, PA 18503  
(For Datom Products)

Lee C. Krause, Esq.  
Howell, Howell & Krause  
109 Ninth Street  
Honesdale, PA 18431  
(For Wayne Highlands School Dist.)

**Dated: April 8, 2011  
Washington, DC**