UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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| IN THE MATTER OF | ) | |
| | ) | |
| BARNSLEY SQUARE LP and | ) | DOCKET NO. CAA-03-2008-0363 |
| SELVAGGIO ENTERPRISES, INC., | ) | |
| | ) | |
| | ) | |
| RESPONDENTS | ) | |

PREHEARING ORDER

As you previously have been notified, I have been designated by the November 21, 2008 Order of the Chief Administrative Law Judge to preside in the above captioned matter.[1/] This proceeding arises under the authority of Sections 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) and (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 (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32. 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 benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

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[1/] The file reflects that the parties have participated in the Alternative Dispute Resolution ("ADR") process offered by this office. Pursuant to the Administrative Law Judges's November 21, 2008 Order terminating the ADR process, the above-cited matter has been reassigned to the undersigned to proceed with the litigation process.

Although Complainant and Respondents have participated in ADR, they have not reached a settlement. As such, the parties shall strictly comply with the requirements of this order and prepare for a hearing. The parties are advised that extensions of time will not be granted absent a showing of good cause. *See* Section 22.7(b) of the Rules of Practice, 40 C.F.R. § 22.7(b). The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the prehearing requirements or to meet the schedule set forth in this Prehearing Order. Of course, the parties are encouraged to initiate or continue to engage in settlement discussions during and after preparation of their prehearing exchange.

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' expected testimony, or a statement that no witnesses will be called; and

   (b) copies of all documents and exhibits which each party 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 "Respondents'" exhibit[2/] as appropriate, and numbered with Arabic numerals (*e.g.*, "Complainant's Exhibit 1"); and

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[2/] Respondents filed a joint Answer and are represented by the same counsel. Respondents, as common parties, may file joint statements or documents, including a prehearing exchange, if they choose. If Respondents choose to file separate joint prehearing exchanges, the proposed exhibits should be identified as "Respondent Barnsley's" or "Respondent Selvaggio's" exhibit.

(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),(d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a),(b),(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 exchanges delineated above shall be filed *in seriatim* manner, according to the following schedule:

January 9, 2009 - Complainant's Initial Prehearing Exchange

February 9, 2009 - Respondents' Prehearing Exchange, including any direct and/or rebuttal evidence

February 23, 2009 - Complainant's Rebuttal Prehearing Exchange (if necessary)

In their joint Answer to the Complaint, Respondents exercised their right to request a hearing pursuant to Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. 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, Respondents each have the right to defend themselves against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Respondents are 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 in 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 Administrative Law Judge 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 Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001
Telephone: 202-564-6281

Barbara A. Gunning
Administrative Law Judge

Dated: November 24, 2008
Washington, DC

**In the Matter of *Barnsley Square LP and Selvaggio Enterprises, Inc.*, Respondent.**
**Docket No. CAA-03-2008-2001**

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order** , dated November 24, 2008, was sent this day in the following manner to the addressees listed below.

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:

Daniel E. Boehmcke, Esq.
Sr. Assistant Regional Counsel
U.S. EPA / Region III / 3RC10)
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by Regular Mail to:

Stanley J. Margle, III, Esq.
Margle Law Offices, PC
107 North Commerce Way, Ste. 110
Bethlehem, PA 18017-8930

Dated: November 24, 2008
Washington, D.C.