

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of: :

Stevenson Commons Associates, L. P. :
Bronx, New York :

& :

Grenadier Realty Corporation :
Brooklyn, NY :

Respondent :

In a proceeding brought pursuant to :
Section 113(a) of the CAA :

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Hon. Susan L. Biro
Chief Administrative Law Judge
Presiding Officer

MOTION FOR EXTENSION

CAA-02-2008-1220

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JUN 16 PM 1:35
REGIONAL HEARING
CLERK

MOTION FOR EXTENSION

Respondents in this proceeding, Stevenson Commons Associates, L.P. and Grenadier Realty Corp., through their attorney, Sive, Paget & Riesel, P.C. requests the Court grant a 30-day extension of time for the parties to file a Joint Set of Stipulated Facts, Exhibits, and Testimony and filing of all pre-hearing motions, an extension concurred upon by the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA) ("Complainant"), through her attorney. For the reasons set forth below, the parties submit that good cause exists for granting the motion.

This is a case brought under Section 113(d) of the Clean Air Act (the Act). The Complaint and Notice of Opportunity to Request a Hearing (Complaint) CAA-02-2008-1220 in this matter alleges violations of 40 C.F.R. Part 60, Subpart A, the "Standards of Performance New Stationary Sources NSPS (NSPS Subpart A), and 40 C.F.R. Part 60, Subpart Dc, 40 C.F.R. § 60.40c – 60.48c the "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units" (NSPS Subpart Dc).

Prior Proceedings

In an Order Setting Prehearing Procedures dated December 2, 2008, Chief Administrative Law Judge Susan L. Biro directed: Respondent to submit its opening prehearing exchange on or before January 16, 2009; Respondents to submit their prehearing exchange on or before February 6, 2009; and Complainant to submit their Rebuttal prehearing exchange on or before February 20, 2009.

On December 15, 2008, Complainant in this proceeding, through its attorney, filed a Motion for Extension of Time to File Prehearing Exchanges requesting the Court grant a 60-day extension of time for the parties to file their prehearing exchanges, an extension concurred upon Respondents, through their counsel. On December 18, 2008 Chief Administrative Law Judge Biro granted the Motion for Extension of Time to File Prehearing Exchanges in part. On December 19, 2008, Complainant submitted a Status Report, in accordance with the Prehearing Order dated December 2, 2008.

On January 8, 2009, the parties held a lengthy settlement conference assisted by a mediator. Respondents, through their counsel, submitted a response to Complainant's offer on January 23, 2009. A conference call with Respondents through Counsel, was held on January 26, 2009. During the call an agreement in principle was reached.

On January 29, 2009, Respondents in this proceeding filed a Motion for Extension of Time to File Prehearing Exchanges requesting the Court grant an additional 30-day extension of time for the parties to file their prehearing exchanges.

On February 13, 2009, Chief Administrative Law Judge Biro granted the Motion for Extension of Time to File Prehearing Exchanges directing: Complainant to submit its opening prehearing exchange on or before March 23, 2009; Respondents to submit their prehearing exchange on or before April 13, 2009; and Complainant to submit its Rebuttal prehearing exchange on or before April 27, 2009.

Respondents submitted a supplemental environmental project (SEP) proposal on February 11, 2009, with further information provided on March 5, 2009. Complainant reviewed the SEP proposal and it was approved by the Environmental Protection Agency's Office of Civil Enforcement on March 25, 2009.

On March 20, 2009, Complainant submitted its Prehearing Exchange. On April 9, 2009, Respondents submitted their Prehearing Exchange. Complainant submitted its Prehearing Exchange Rebuttal on April 22, 2009.

On May 7, 2009, Complainant sent the Consent Agreement and Final Order (CAFO), embodying the agreement in principle, to Respondents for signature. On May 11, 2009, Respondents notified Complainant that Respondents required at least two (2) weeks to review the CAFO. On May 12, 2009, the Complainant (on behalf of both parties) informed the staff attorney for the Honorable Chief Judge Biro, Lisa Knight, that an agreement in principle had been reached and that the parties requested an extension of time for Respondents to review the CAFO. Ms. Knight directed Complainant to file a joint motion for an extension until such time as the settlement is finalized.

Accordingly, the parties' Motion for an Extension is hereby **GRANTED**. The parties shall file their fully executed CAFO in this matter or any stipulations **on or before June 22, 2009** and any and all pre-hearing motions, including motions for accelerated decisions, shall be filed **on or before June 26, 2009**. All other deadlines previously established shall remain in effect.

Good Cause Exists

The parties believe that the good cause requirement of 40 C.F.R. § 22.7(b) is satisfied for the granting of this motion.

The parties have exchanged drafts of the CAFO and are in the process of scheduling a meeting to resolve the remaining differences in the competing drafts. The parties have been delayed in finalizing the CAFO due to two principal reasons: (A) the CAFO is relatively complex, involving (i) the resolution of alleged Clean Air Act violations; (ii) a ? SEP as partial payment; (iii) an environmental audit; and (iv) two separate Respondents, one of them a limited profit corporation providing below-market housing to residents of New York City and (B) the principal attorneys' professional schedules, e.g., I will be teaching an ALI-ABA course during the week of June 22nd in Boulder, Colorado, and the EPA's principal attorney had an out-of-town assignment last week.

I have also been informed that once the attorneys have reached an agreement with respect to the CAFO's language that EPA will need approximately two weeks to process the final version of the CAFO.

EPA joins in this motion and both parties believe that it is their mutual interest as well as the interests of judicial economy that the parties be able to concentrate on resolving the remaining problems.

WHEREFORE it is prayed that the parties receive an additional 30 (thirty) day extension of their time to submit stipulated facts, etc.

Respectfully submitted,

By: 
Daniel Riesel

SIVE PAGET & RIESEL, P.C.
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To:

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Region 2
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New York, New York 10007-1866

In the Matter of Stevenson Commons Associates, L.P., and Grenadier Realty Corp.
Docket No. CAA-02-2008-1220

CERTIFICATE OF SERVICE

I, Daniel Riesel, certify that the foregoing Motion for Extension was sent this day in the following manner to the addressees listed below:

Original and Copy:
Federal Express

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Federal Express:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460-2001

Copy by Federal Express:

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U.S. Environmental Protection Agency
Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Dated: June 15, 2009
New York, New York



Daniel Riesel