

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JUL 21 PM 2:37
REGIONAL HEARING
CLERK

In the Matter of:

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

&

Grenadier Realty Corp.
Brooklyn, New York

Respondents

In a proceeding under Section 113(d)
of the Clean Air Act 42 U.S.C. § 7413(d)

CONSENT AGREEMENT
AND
FINAL ORDER

CAA-02-2008-1220

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., 42 U.S.C. § 7413(d), Section 113(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the

U.S. Virgin Islands. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On September 23, 2008, the United States Department of Justice (DOJ) granted the EPA Region 2 request for a waiver of the CAA § 113(d) one year time limitation on EPA's authority to initiate an administrative action in this matter against Stevenson Commons Associates, L.P. (Respondent Stevenson), and Grenadier Realty Corp. (Respondent Grenadier) (collectively Respondents).

On September 26, 2008, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2008-1220 (Complaint) to Respondents for civil monetary penalties. In the Complaint, EPA alleges that Respondents violated 40 C.F.R. Part 60 Subpart A, the "New Source Performance Standards General Provisions," 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) promulgated pursuant to Sections 111 and 114 of the Act.

The Complaint does not allege violations of 40 C.F.R. § 60.42c(d) which prohibits an owner or operator of an affected facility that combusts oil to discharge into the atmosphere from that affected facility any gases that contain SO₂ in excess of 0.50 lb/MMBtu heat input.

Pursuant to 40 C.F.R. § 22.18(b), EPA is authorized to settle administrative enforcement actions provided they are commenced in accordance with 40 C.F.R. § 22.13(a) or (b). Where an action is commenced pursuant to § 22.13(b), the Consent Agreement shall also contain the information described in § 22.14(a)(1) - (3) and (8). In accordance with §§ 22.13(b), and 22.18(b), EPA and Respondents enter into this

Consent Agreement and propose the attached Final Order to resolve the violations alleged in the Complaint, filed pursuant to 40 C.F.R. § 22.13(a).

Complainant and Respondents have agreed to resolve the Complaint by entering into this Consent Agreement and by the issuance of a Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondents: (1) admit that EPA has jurisdiction over the subject matter as alleged in this Consent Agreement; (2) neither admit nor deny specific factual allegations contained in the Complaint and in this Consent Agreement; (3) consent to the terms of agreement set forth in this Consent Agreement; and (4) consent to the issuance of the attached Final Order.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Pursuant to Section 113(d) of the Act, Respondents shall pay a civil penalty of nineteen thousand five hundred and thirty-two dollars (\$19,532). Respondents shall have the option of paying the entire \$19,532 within thirty (30) days of the Effective Date of this CAFO. If payment in entirety is not made within thirty (30) days of the Effective Date of this CAFO, payment shall be made in monthly payments over the course of no less than six (6) months from the date the Final Order is executed by the Regional Administrator (Effective Date). The first payment of \$3257 shall be made within thirty (30) days from the Effective Date. The remaining civil penalty amount of \$16,275 shall be made in accordance with the following payment schedule comprising 5 monthly payments.

- i. The first monthly payment of \$3255 is due in Payment Period 1. Payment Period 1 comprises the second full month following the Effective Date.
 - ii. The second monthly payment of \$3255 is due in Payment Period 2. Payment Period 2 comprises the full month immediately following Payment Period 1.
 - iii. The third monthly payment of \$3255 is due in Payment Period 3. Payment Period 3 comprises the full month immediately following Payment Period 2.
 - iv. The fourth monthly payment of \$3255 is due in Payment Period 4. Payment Period 4 comprises the full month immediately following Payment Period 3.
 - v. The fifth and final monthly payment of \$3255 is due in Payment Period 5. Payment Period 5 comprises the full month immediately following Payment Period 4.
2. Each payment shall be made either by cashiers' or certified check. Respondents shall: (1) clearly type or write the docket number (CAA-02-2008-1220) on the checks to ensure proper payment; (2) make the checks payable to the order of "Treasurer, United States of America;" and (3) send the checks to:

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

3. Respondents shall send notice of each payment identifying the Payment Period covered by each payment and a copy of the checks to the following individuals:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, New York 10007

and

Flaire Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007

4. If Respondents fail to make full and complete payment of the \$19,532 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondents shall pay the following amounts:
 - a. Interest. If Respondents fail to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
 - b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
 - c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondents fail to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondents shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.
5. SEP – Enhanced/Optimized Combined Heat and Power (CHP) Operation

Respondents shall complete the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental or public health protection and improvements.

 - a. Not more than sixty (60) days after the Effective Date, Respondents will submit an application to the Department of Housing Preservation and

Development of the City of New York ("HPD") for approval of expenditure for the SEP. Respondents will diligently pursue the application.

- b. Not more than eighteen (18) months after the Effective Date, Respondents shall install an "Enhanced/Optimized CHP Operation." Specifically

Respondents shall install:

- i. A 10-ton Yazaki Hot Water Driven Absorption Chiller;
- ii. A 10-ton cooling coil for inlet air duct to the CHP unit;
- iii. A 300,000 BTUH water to water heat exchanger;
- iv. A 50,000 BTUH heat recovery fan coil unit;
- v. An exhaust louver for heat recovery FC unit;
- vi. Structural supports for FC unit and chiller;
- vii. A 25 GPM in-line chilled water pump; and
- viii. System controls, valves and thermostats.

6. The total expenditure for the SEP shall be not less than \$75,000, in accordance with Paragraph 5 above. Respondents shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

7. Respondents hereby certify that, as of the date of this Consent Agreement and Final Order, Respondents are not required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case.

Respondents further certify that they have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

8. SEP Reports

a. SEP Completion Report Respondents shall submit a SEP Completion Report to EPA by no later than eighteen (18) months after the Effective Date. The SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any operating problems encountered and the solutions thereto;
- iii. Itemized costs;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. Periodic Reports Respondents shall submit Periodic Reports to EPA every sixty (60) days, after the Effective Date. The Periodic Reports shall include, at a minimum, but not limited to:

- i. A description of the work completed during the reporting period;
- ii. A description of any problems encountered during the reporting period and the solutions thereto;
- iii. A description of the work that is projected to be completed during the next reporting period; and
- iv. An itemization of money spent during the reporting period.

The last Periodic Report shall coincide with the SEP Completion Report.

- c. Respondents agree that failure to submit the SEP Completion Report or any Periodic Report required by subparagraphs (a) and (b) above shall be deemed a violation of this CAFO and Respondents shall become liable for stipulated penalties pursuant to Paragraph 11 below.
- d. Respondents shall submit all notices and reports required by this CAFO, by first class mail to:

Kenneth Eng, Air Compliance Branch Chief
U.S. EPA Region 2
290 Broadway - 21st Floor
New York, New York 10007

and

Flaire Mills, Air Branch Chief
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway - 16th Floor
New York, New York 10007

- e. In itemizing Respondents' costs in the SEP completion report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
9. Respondents shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CAFO and shall provide the documentation of any such underlying research

and data to EPA not more than ten (10) days after a request for such information.

In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CAFO, Respondents shall, by their officers, sign and certify under penalty of law that the information contained in such document or report is true accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

10. EPA Acceptance of SEP Report

- a. After receipt of the SEP Completion Report described in Paragraph 8.a above, EPA will notify Respondents, in writing, regarding: (i) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondents to correct any deficiencies; or (ii) indicate that EPA concludes that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 11 herein.
- b. If EPA elects to exercise option a(i) above, i.e., if the SEP report is determined not to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondents the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such

issue within this thirty (30) day period, EPA shall provide a written statement of its decisions on adequacy of the completion of the SEP to Respondents, which decision shall be final and binding on Respondents. Respondents agree to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondents to EPA in accordance with Paragraph 11 herein.

11. Stipulated Penalties for Failure to Complete SEP

- a. In the event that Respondents fail to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 5 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 5 above, Respondents shall be liable for stipulated penalties according to the provisions set forth below.
 - i. Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondents shall pay a stipulated penalty to the United States in the amount of \$75,000.
 - ii. If the SEP is not completed in accordance with Paragraph 5 above, but the Complainant determines that the Respondents: (a) made good faith and timely efforts to complete the project; and (b) certify, with supporting documentation, that at least 90 percent of the amount of

money which was required to be spent was expended on the SEP, Respondents shall not be liable for any stipulated penalty.

iii. If the SEP is completed in accordance with Paragraph 5 above, but the Respondents spent less than 90 percent of the amount of money required to be spent for the project, Respondents shall pay a stipulated penalty to the United States in the amount of the difference in the amount spent on the project and \$75,000.

iv. If the SEP is completed in accordance with Paragraph 5 above and the Respondents spent at least 90 percent of the amount of money required to be spent for the project, Respondents shall not be liable for any stipulated penalty.

v. For failure to submit the SEP Completion Report required by Paragraph 8.a above, Respondents shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due up to ten (10) days. For each day following the tenth day after the report was originally due, Respondents shall pay a stipulated penalty in the amount of \$500 each day until the report is submitted.

vi. For failure to submit a Periodic Report required by Paragraph 8.b above, Respondents shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due up to ten (10) days. For each day following the tenth day after the report was originally due, Respondents shall pay a stipulated penalty in the amount of \$250 each day until the report is submitted.

- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondents have made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.
- c. Stipulated penalties for Subparagraphs a(v) and a(vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 2 above. Interest and late charges shall be paid as stated in Paragraph 12 herein.
- e. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation(s) of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondents' violation(s) of any applicable provision of law.

12. Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA 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 therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which

remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. § 102.13(d) and (e).

13. Any public statement, oral or written, in print, film or other media, made by Respondents making reference to the SEP shall include the following language:
“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act.”
14. This CAFO shall not relieve Respondents of their obligations to comply with all applicable provisions of federal state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondents in connection with the SEP undertaken pursuant to this Agreement.
15. SEP Force Majeure
 - a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondents shall notify Complainant in writing not more than ten (10) days after the delay or Respondents' knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Failure by

Respondents to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondents' rights to request an extension of their obligation under this Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondents, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondents, EPA will notify Respondents in writing of its decision, setting forth the reasons and any delays in the completion of the SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondents shall rest with the Respondents. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under subparagraph (b) of this Paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

- 16. Respondents hereby agree not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes. In

addition, Respondents hereby agree that, within thirty (30) days of the date they submit their Federal tax reports for the calendar year in which the above-identified SEP is completed, that Respondents will submit to EPA as required in paragraph 8 above, certification that for Federal tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

17. Settlement Condition – Respondent Grenadier Facilities Audit

- a. The Respondent Grenadier Facility Audit (“Facilities Audit”) described herein is intended and designed, *inter alia*, to advance the protection of human health and the environment, a stated goal of the CAA.
- b. Not more than six (6) months after issuance of this CAFO, Respondent Grenadier agrees to complete a Facilities Audit by an outside consultant.
- c. The Facilities Audit shall provide a thorough assessment of all the properties owned and/or operated, as of the Effective Date of this CAFO, by Respondent Grenadier to evaluate the individual facilities’ compliance with 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c.

18. Respondent Grenadier shall retain an independent third party (the “Auditor”) to perform the Facilities Audit. Respondent Grenadier agrees to undertake the following with regard to the performance of the Facilities Audit:

- a. Within sixty (60) days of the date of this CAFO, Respondent Grenadier shall submit a Facilities Audit Plan by first class mail to:

Kenneth Eng, Air Compliance Branch Chief
U.S. EPA Region 2
290 Broadway - 21st Floor
New York, New York 10007

and

Flaire Mills, Air Branch Chief
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway - 16th Floor
New York, New York 10007

The Facilities Audit Plan shall include:

- i. The name and address of the Auditor whom Respondent Grenadier has selected to conduct the Facilities Audit at facilities owned and/or operated by Respondent Grenadier;
 - ii. A copy of the contract entered into by Respondent Grenadier with the Auditor concerning performance of the Facilities Audit;
 - iii. A list of all properties owned and/or operated, as of the Effective Date of this CAFO, by Respondent Grenadier;
 - iv. A proposed schedule (the "Facilities Audit Schedule") for performance of the Facilities Audit, which shall provide for the completion of the Facilities Audit and submission to EPA of the Facilities Audit Report; and
 - v. A proposed plan describing the procedures by which the Facilities Audit shall be performed, that enables reporting in accordance to Paragraph 19.
- b. Upon completion of a review by EPA of the materials described in Paragraph 18a above, submitted by Respondent Grenadier to EPA, EPA shall, in its sole discretion, either: (1) notify Respondent Grenadier in writing of EPA's approval of Respondent Grenadier's selection of the Auditor, the Facilities Audit Plan and the Facilities Audit Schedule as proposed by Respondent Grenadier, or (2) notify Respondent Grenadier in writing of EPA's rejection of

any or all of the aforementioned items as proposed by Respondent Grenadier. If EPA rejects any or all of Respondent Grenadier's proposals, EPA shall state the reasons for such rejection and shall provide to Respondent Grenadier in writing a reasonable time in which to make a new submittal. The performance of the Facilities Audit shall commence only upon Respondent Grenadier's receipt of approval by EPA of the Facilities Audit Schedule and the Facilities Audit Plan. If Respondent Grenadier fails to submit any or all of the items addressed in Paragraph 18 of this CAFO within the deadline established herein for such submission or fails to revise and re-submit any or all of the items addressed in Paragraph 18 of this CAFO within the deadline provide by EPA after receipt of EPA's rejection of such items, EPA shall have the right to seek and collect the maximum penalty allowed by law for any and all violations of 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c, at any of the facilities owned and/or operated by Respondent Grenadier.

- c. Respondent Grenadier shall fully cooperate with requests made by the Auditor concerning performance of the Audit and preparation of the Facilities Audit Report.
- d. Upon completion of a review of the Facilities Audit Report, EPA shall, in its sole discretion, either: (1) notify Respondent Grenadier in writing of its approval of the Facilities Audit Report, or (2) notify Respondent Grenadier in writing of its rejection of all or any part of the Facilities Audit Report.

If EPA rejects all or any part of the proposed Facilities Audit Report, EPA shall state the reasons for such rejection and shall provide Respondent

Grenadier in writing a reasonable time in which to make a new submittal. In the event that Respondent Grenadier fails to revise and re-submit any or all of the items addressed in EPA's notice of rejection for the Facilities Audit Report within the deadline provided by EPA in such notice, EPA shall have the right to investigate any and all of the facilities owned and/or operated by Respondent Grenadier that were not properly addressed in such Facilities Audit Report and to seek and collect the maximum civil penalty allowed by law for any and all violations of 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c, at any such facility.

- e. Respondent Grenadier shall immediately undertake each and every action necessary to correct any violation of 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c: to implement the audit plan; to complete a facilities audit within the time specified in Paragraph 17b; and to institute effective measures to ensure that any such violation does not occur in the future. Nothing in this paragraph shall relieve Respondent Grenadier of any obligation imposed by any applicable federal, state and/or local laws and requirements concerning CAA compliance.
- f. Respondent Grenadier shall be subject to civil penalties in accordance with the penalty schedule set forth in Paragraph 23 of this CAFO for any violation of 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c discovered, disclosed, and corrected pursuant to the Facilities Audit. Whatever claim for civil penalties EPA may have for each such violation shall be resolved and settled by Respondent Grenadier's payment of the

prescribed penalty for such violation, in accordance with Paragraph 23 of this CAFO, subject to all Subparagraphs in Paragraph 18.

19. Reports, Documentation and Notification – Respondent Grenadier shall submit the Facilities Audit Report upon completion of all activities required by the audit, in accordance with the Facilities Audit Schedule, and shall be subject to the additional requirements set forth in Subparagraph 19(a) of this CAFO below:

- a. The Facilities Audit Report shall contain the following information: (1) the name and address of each Facility audited by the Auditor during the Facilities Audit; (2) a detailed description of each unit subject to 40 C.F.R. § 60.48c(d), (e), (g), (i) and (j) and 40 C.F.R. § 60.7; (3) a description of the information reviewed by the Auditor to perform the compliance audit to satisfy the requirements of Paragraph 18 of this CAFO; (4) a statement indicating whether any violations were discovered during the audit; (5) a detailed description of each violation found at each facility, including the days of noncompliance with the regulatory requirement violated; (6) the date actions were taken and a description of actions taken by Respondent Grenadier to correct any such violation and/or to prevent the reoccurrence of such violation at such facility; (7) a statement indicating problems or difficulties, if any, in performing the compliance audit at each facility, and the measures taken to address such problems or difficulties at each facility; and (8) for any facilities not subject to 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c, a statement explaining why the facility is not subject; and (9) an inspection checklist for each facility executed by the Auditor and certified by Respondent Grenadier in the following manner:

I certify that the facility identified in this Facilities Audit Report is currently in full compliance with respect to the requirements of 42 U.S.C. §§ 7401 et. seq. at 40 C.F.R. § 60.48c(d), (e), (g), (i) and (j) and 40 C.F.R. § 60.7. I make this certification with the knowledge that any violation of 42 U.S.C. §§ 7401 et. seq. at 40 C.F.R. § 60.48c(d), (e), (g), (i) and (j) and 40 C.F.R. § 60.7, which is subsequently discovered at this facility by EPA, independent of the Facilities Audit, may be subject to an enforcement action by EPA and the imposition of civil penalties pursuant to 42 U.S.C. §§ 7401 et. seq. at 40 C.F.R. § 60.48c(d), (e), (g), (i) and (j) and 40 C.F.R. § 60.7. Furthermore, I certify that the information contained in or accompanying this Facilities Audit Report is true, accurate, and complete. As to [the/those] identified portions of the Facilities Audit Report for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that the Facilities Audit Report and all attachments, including any and all supporting information, were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing submission of such information.

Signature:

Name:

Title:

- b. Respondent Grenadier shall maintain, for inspection, original copies of any and all underlying records, research and data provided to the Auditor that formed the basis of the determination for the Facilities Audit Report for a period of three (3) years from the date of submission to EPA of the Facilities Audit Report. Respondent Grenadier shall provide the documentation of any and all such underlying research and data to EPA within seven (7) calendar days of receipt of written request for such information by EPA.
20. EPA shall be under no obligation to review and/or approve the Facilities Audit Report that is not submitted or revised by Respondent Grenadier within the

deadline established for such submission or revision in this CAFO, the approved Facilities Audit Plan and Schedule or pursuant to Paragraph 21 (“Facilities Compliance Audit Force Majeure”) of this CAFO. Any violation of 40 C.F.R. Part 60 Subpart A and Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c, not discovered and corrected pursuant to the Facilities Compliance Audit, and disclosed in the Facilities Audit Report, shall not qualify for the prescribed civil penalties set forth in Paragraph 23 of this CAFO, and EPA shall have the right to seek and collect the maximum civil penalty allowed by law for such violation. Notwithstanding any other provisions of this CAFO, no action or decision by EPA pursuant to this CAFO shall constitute final agency action giving rise to any right to judicial review prior to EPA’s initiation of judicial action to compel compliance with this CAFO. Nothing in Paragraph 20 should be construed to curtail any right to judicial review that Respondents may have upon initiation by EPA of a judicial action to compel compliance with this CAFO.

21. Facilities Compliance Audit Force Majeure

- a. If any event occurs which causes or may cause delays in the completion of the Facilities Audit as required under this Agreement, Respondent Grenadier shall notify Complainant in writing not more than ten (10) days after the delay or Respondent Grenadier’s knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent Grenadier to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent Grenadier shall adopt all reasonable measures to avoid or minimize any such delay. Failure

by Respondent Grenadier to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent Grenadier's rights to request an extension of their obligation under this Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent Grenadier, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Facilities Audit has been or will be caused by circumstances beyond the control of Respondent Grenadier, EPA will notify Respondent Grenadier in writing of its decision and any delays in the completion of the Facilities Audit shall not be excused.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent Grenadier shall rest with Respondent Grenadier. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this Paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

22. Respondent Grenadier shall bear the entire cost of the Facilities Audit described in Paragraph 17 above. Respondent Stevenson shall not be liable for any of the following: (1) any cost associated with the drafting or submittal of the Facilities Audit plan; (2) any cost associated with conducting the Facilities Audit; and (3) any cost associated with completing the Facilities Audit and/or drafting and submitting the final report. Respondent Stevenson shall not be liable for any findings of violations for any facilities located on properties owned and/or operated by Respondent Grenadier, not owned wholly or in part by Respondent Stevenson and/or any of Respondent Stevenson's limited partners.
23. Penalty Schedule for Violations Discovered Pursuant to the Audit. Respondent Grenadier will adhere to the following discounted penalty schedule:
- a. Failure to submit a notification of the date of construction or reconstruction and actual startup pursuant to 40 C.F.R. § 60.48c(a)
 - i. Lateness of up to 1 year - \$ 6,488
 - ii. Lateness of more than 1 year, and up to 2 years - \$ 9,671
 - iii. Lateness of more than 2 years, and up to 3 years - \$ 12,895
 - iv. Lateness of more than 3 years, and up to 4 years - \$ 16,119
 - v. Lateness of more than 4 years, and up to 5 years - \$ 19,343
 - b. Failure to submit semi-annual NSPS Subpart reports to EPA, 40 C.F.R. § 60.48c(d), (e) and (j)
 - i. Lateness of up to 1 year - \$ 9,671
 - ii. Lateness of more than 1 year, and up to 2 years - \$ 12,895
 - iii. Lateness of more than 2 years, and up to 3 years - \$ 16,119

iv. Lateness of more than 3 years, and up to 4 years - \$ 19,343

v. Lateness of more than 4 years, and up to 5 years - \$ 22,566

c. Failure to record and maintain records of the amount of each fuel combusted pursuant to 40 C.F.R. § 60.48c(g)

i. Lateness of up to 1 year - \$ 9,671

ii. Lateness of more than 1 year, and up to 2 years - \$ 12,895

iii. Lateness of more than 2 years, and up to 3 years - \$ 16,119

iv. Lateness of more than 3 years, and up to 4 years - \$ 19,343

v. Lateness of more than 4 years, and up to 5 years - \$ 22,566

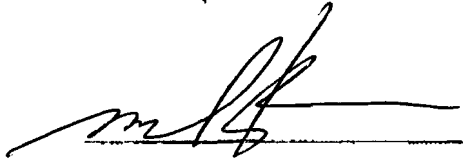
d. Size of Violator component of \$ 1,612 is to be assessed once per facility where violations of Paragraphs 23a, b and/or c exist. The penalties set forth above in this paragraph shall apply to each site as opposed to the individual units at the site, and penalties for the duration of the violation are not cumulative.

24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for violations alleged in the Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of the Respondents to comply with such laws and regulations.

25. This CAFO is being entered into voluntarily and knowingly by the parties in full settlement of Respondents' alleged violations of the Act set forth herein.

26. Respondents have read the CAFO and consent to the terms and issuance as a Final Order.
27. Respondents explicitly waive their rights to request a hearing and/or contest allegations in this CAFO and explicitly waive their rights to appeal the CAFO.
28. Respondents waive any right they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this CAFO.
29. Each party to this CAFO shall bear its own costs and attorneys fees in this action resolved by this CAFO.
30. This CAFO shall be binding on Respondents and their successors and assigns.
31. A copy of all notices and other communications to Respondents from the EPA, required pursuant to this CAFO, shall be sent by email to each of the Respondents set forth below and by first class mail to their counsel, Daniel Riesel, Sive, Paget & Riesel, P.C., 460 Park Avenue, New York, New York 10022.
32. Each of the undersigned representative(s) to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind that party to it.

For Respondent Stevenson:



Stevenson Commons Associates, L.P.
By: IFP Corp., Managing General Partner
By: Michael J. Fischer, President

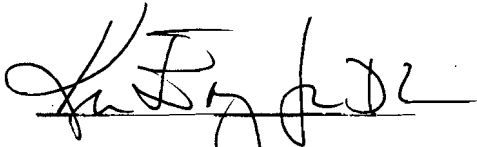
Date 7/14/09

For Respondent Grenadier:

Jane H. Kreger, President
Grenadier Realty Corporation
1230 Pennsylvania Avenue
Brooklyn, NY 11239

Date _____

For Complainant:



Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance
United States Environmental
Protection Agency, Region 2


Date 7/20/09

For Respondent Stevenson:

Stevenson Commons Associates, L.P.
By: IFP Corp., Managing General Partner
By: Michael J. Fischer, President

Date _____

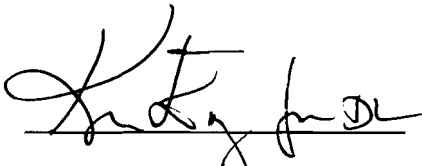
For Respondent Grenadier:



Jane H. Krøger, President
Grenadier Realty Corporation
1230 Pennsylvania Avenue
Brooklyn, NY 11239

Date 7/13/09

For Complainant:



Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date 7/20/09

In the Matter of Stevenson Commons, L.P. & Grenadier Realty Corporation
CAA-02-2008-1220

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Stevenson Commons Associates, L.P. & Grenadier Realty Corporation, CAA-02-2008-1220. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 7/21/09



George Pavlou
Acting Regional Administrator
U.S. Environmental Protection
Agency – Region 2