

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

----- X  
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 :  
----- X

**ANSWER and RESPONDENTS'**  
**REQUEST FOR A HEARING**

CAA-02-2008-1220

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 OCT 31 PM 2:47  
REGIONAL HEARINGS  
OLENK

Stevenson Commons Associates, L. P. ("Stevenson") and Grenadier Realty Corporation ("Grenadier"), by their attorneys, Sive, Paget & Riesel, P.C. hereby request an opportunity for a hearing, and answer the Complaint herein as follows:

1. Neither admit nor deny the allegations in Paragraphs "1" through "32", "64", "67" and "69" through "73" of the Complaint as any attempt to state conclusion of Law.
2. Deny the allegation in Paragraph "68" of the Complaint.
3. Admit the allegation of Paragraphs "33", "34", "35", "43", "44", and "59" through "63" of the Complaint.
4. Deny knowledge or information sufficient to form a belief as to the truthfulness of the allegations in Paragraphs "36" through "42" of the Complaint.
5. Neither admit nor deny the allegations of Paragraphs "45" through "58" of the Complaint and beg leave to refer to the contents of the documents cited therein for their contents.
6. Deny each and every other allegation of the Complaint.

**Affirmative Defenses  
And Response to Penalty Calculations**

7. The Respondents purchase and at all relevant times have purchased fuel oil from recognized fuel oil suppliers in the City of New York. It is virtually impossible to obtain fuel for oil burner purposes in New York City with a sulfur content of more than 0.3% because 6 NYCRR§225-1.2, 1.8 prohibits the sale of such oil in the City of New York.

8. The applicable regulations provide “[t]he monitoring requirements of paragraphs (a) through (d) of this section shall not apply to affected facilities subject to §60.42c(h) (1), (2), or (3) where the owner or operator of the affected facility seeks to demonstrate compliance with SO2 standards based on fuel supplier certification . . .”

9. The reporting and record keeping regulations set forth in the Complaint are intended to insure that oil with a sulfur content of more than 0.5% is not burned; and therefore, as a practical matter are made superfluous by the New York State regulations.

10. The Respondents have attempted to use Fuel Supplier Certificates to comply although in the City of New York, the detailed information required would be unnecessary because of State and City requirements prohibiting the use of high sulfur fuel and the general unavailability of high-sulfur fuel in New York City.

11. The Penalty Policy is inapplicable to the instant situation because it does not take into account State regulations prohibiting a sulfur content above 0.3%. To the extent that the Penalty Policy is still applied it would take on the impermissible status of a regulation because it would constitute a rule without the requisite notice and opportunity to comment as provided by the Administrative Procedure Act.

12. If the Penalty Policy were to be applied, it would have to be corrected to account for misstatement of certain facts, including the size of the Respondents. The Penalty Policy’s

application also does not take account of the public good served by the Respondents, nor the public monies involved in the construction and operation of the subject Housing Project.

13. Stevenson was organized to construct and operate a limited profit residential housing project in the Bronx under Article II of the Private Housing Finance Law, known also as the "Mitchell-Lama Law". The Housing Project is regulated as to rent charges and operating methods by the U.S. Department of Housing and Urban Development ("HUD") and the New York City Department of Housing Preservation and Development.

14. The Housing Project is primarily designed to provide below market housing to low-income people. Contrary to the assertion in the Complaint's Penalty Policy calculations, Stevenson's balance sheet has a net negative balance due to its obligation to provide below market housing, amongst other factors. Ultimately, any fine assessed will burden Stevenson and be counterproductive to the objectives pursuant to which Stevenson was organized.

15. The Complaint alleges that the EPA inspected the premises on August 25, 2005. Nevertheless, the Respondents were not put on notice of their reporting and record-keeping violations until almost two years later, when the Region issued its Request for Information. The Respondents acted with reasonable dispatch upon learning of the relatively obscure regulations' requirements, and implemented the requirements of the Compliance Order.


16. The Clean Air Act that requires the penalty be calculated by taking into consideration, (1) the economic benefit of non compliance, (2) the "gravity" of the violation, (3) the degree of willfulness or negligence, and (4) the environmental damage if any. Consideration of these factors strongly militates against the imposition of the proposed fine. The Region has conceded that there was no significant economic benefit and no environmental harm. Moreover, the gravity has to be negligible because the applicable state regulations prohibit the burning of

oil with a higher than .3 % sulfur. Furthermore, when the respondents became aware of the applicable federal regulations they acted promptly and responded to the compliance order issued in this matter.

Dated: October 30, 2008  
New York, New York

Yours, etc.,

SIVE PAGET & RIESEL, P.C.  
Attorneys for Respondents  
Stevenson Commons Associates, L. P. and  
Grenadier Realty Corporation

By:   
Daniel Riesel  
460 Park Avenue  
New York, NY 10022  
(212) 421-2150

To:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

Marie Quintin / Flaire Mills  
Office of Regional Counsel, Air Branch  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
  ss.:  
COUNTY OF NEW YORK    )

Helen Kanelous, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in Manhattan, New York.

On October 30, 2008, I served the Answer And Respondents' Request For A Hearing upon:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

With a copy to:


Marie Quintin / Flaire Mills  
Office of Regional Counsel, Air Branch  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a properly addressed wrapper, via DHL Express.



Helen Kanelous

Sworn to before me this  
30th day of October, 2008

  
Notary Public

LAURA SHEPHERD  
Notary Public State of New York  
No. 01SH6154578  
Qualified in Westchester County  
Certificate Filed in New York County  
Commission Expires 10/23/2010

---

**Case No. CAA-02-2008-1220**

---

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 2

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

---

**ORIGINAL**

**ANSWER AND RESPONDENTS'  
REQUEST FOR A HEARING**

---

**SIVE, PAGET & RIESEL, P.C.**  
Attorneys for Respondants  
Stevenson Commons Associates, L. P.  
and  
Grenadier Realty Corporation  
*Office and Post Office Address, Telephone*  
**460 Park Avenue**  
**New York, New York 10022**  
**(212)421-2150**

---