

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 MAR 20 PM 11:35  
REGIONAL HEARING  
CLERK

In the Matter of:

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

&

Grenadier Realty Corp.  
Brooklyn, NY

Respondents

In a proceeding under the Clean Air Act,  
42 U.S.C. § 7401, et seq, 42 U.S.C.  
§ 7413(d), Section 113(d)

PREHEARING EXCHANGE

CAA-02-2008-1220

**I. PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA) submits this Prehearing Hearing Exchange in accordance with the December 2, 2008 "Prehearing Order" issued by the Honorable Susan L. Biro C Chief Administrative Law Judge.

Pursuant to 42 U.S.C. § 7401, et seq, 42 U.S.C. § 7413(d), Section 113(d), the Clean Air Act (CAA or the Act), Complainant filed an administrative Complaint and Notice of Opportunity to Request a Hearing against Respondents for violations of 40 C.F.R. Part 60, Subpart Dc "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units," promulgated pursuant to 42 U.S.C. §§ 7411 and 7414, Sections 111 and 114 of the Act. The total amount of the penalty proposed by Complainant is \$190,799. Respondents' filed an Answer and Request for a Hearing dated October 30, 2008.

In the Complaint, EPA alleges that Stevenson Commons Associates, L. P. (Respondent Stevenson) and Grenadier Realty Corp. (Respondent Grenadier) together known as the "Respondents," violated 40 C.F.R. Part 60, Subpart A, 40 C.F.R. §§ 60.1 – 60.19, the "New Source Performance Standards General Provisions" (NSPS 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.

## **II. REQUIREMENTS FOR PREHEARING EXCHANGE**

Pursuant to the Prehearing Order each party shall submit:

### **(A) NAMES OF EXPERT AND OTHER WITNESSES**

Complainant intends to call the following witness:

**Daniel Manasia**: Environmental Scientist and Enforcement Officer, Air Compliance Branch, Division of Environmental Compliance and Assistance, EPA, Region 2.

As a fact witness, Mr. Manasia is expected to testify that, in accordance with Section 114 of the Act, he performed an investigation of Stevenson Commons to determine Respondents' CAA compliance activities, focusing on Respondent's work practice, and record keeping and reporting practices, to determine if these practices conformed with the requirements of 40 C.F.R. Part 60, Subpart Dc. Mr. Manasia is also expected to describe his investigation and the documentary evidence obtained during his investigation, discuss what his investigation revealed, and provide a summary of

EPA's compliance and enforcement actions with respect to Respondents.

As to specific findings of fact alleged in the Complaint not admitted to by Respondent in its October 30, 2008, Answer to the Complaint (Answer), Mr. Manasia relying on the documentary evidence as necessary, is expected testify as follows:

1. During the Inspection, the EPA inspector met with an individual who identified himself as the property manager and another individual who identified himself as the superintendent of the Facility (together the "Facility Representatives").
2. During the Inspection, the EPA inspector observed that the Facility was comprised of three (3) 24 story and six (6) six (6) story buildings.
3. During the Inspection, the EPA inspector observed four (4) steam/hot water boilers at the Facility, which serviced the Facility. Two (2) of the steam/hot water boilers were located at 755 White Plains Road and two (2) located at 1850 Lafayette Avenue.
4. During the Inspection, the EPA inspector requested the Facility Representatives provide copies of records of fuel supplier certifications. In response to the request, one of the Facility Representatives stated the Facility did not have fuel supplier certifications nor had it had ever obtained them.
5. During the Inspection, the EPA inspector requested the Facility Representatives provide copies of records of the amounts of each fuel combusted each day. In response to the request, one the Facility Representative indicated that the Facility had kept such records, but the Facility Representative did not provide the EPA Inspector with the records.

6. After the Inspection, EPA conducted a search of EPA's files and found no reports pertaining to this Facility that included any information sought during the Inspection.

7. Jane H. Krieger, identified as the President of Respondent Grenadier, executed the certification in Response 1 of the 114 Response.

8. In Response 2 of the 114 Response, Respondent Grenadier provides the following address for Stevenson Commons: Stevenson Commons Associates, L.P., 755 White Plains Road, Bronx, NY 104; and the following addresses for Stevenson Commons' properties: 1850, 1856, 1860, 1870 and 1880 Lafayette Avenue, Bronx, NY 10473, and 711, 721, 741 and 755 White Plains Road, Bronx, NY 10473.

9. In Response 5 of the 114 Response, Respondent Grenadier states, among other things, the following: "Grenadier is a property management company specializing in low income housing. It does not own Stevenson Commons. Stevenson Commons is owned by Stevenson Commons Associates, L.P., which to the best of my knowledge does not own similar facilities." Furthermore, in Response 9, Respondent Grenadier cites Response 5 stating that Grenadier has never owned Stevenson Commons: "Grenadier is an Agent for the Owner, Stevenson Commons Associates, L.P., providing property management services. Grenadier has managed Stevenson Commons since 1985."

10. In Response 6 of the 114 Response, Respondent Grenadier states, among other things, the following: "Grenadier has administrative responsibility concerning permit compliance reporting, hiring consultants for permit compliance reports, and hiring contractors for annual boiler tune-ups and maintenance. All

expenditures made by Grenadier, as an Agent, are pre-approved by the Owner. The Owner, through its facility Superintendent, is responsible for operation of the boilers, recordkeeping of fuel deliveries and maintaining opacity of the flue gas leaving the stack.”

11. In Response 7 of the 114 Response, Respondent Grenadier states, among other things, the following: “Grenadier uses professional consultants to handle environmental issues as required.”

12. In Response 8 of the 114 Response, Respondent Grenadier states, among other things, the following: “Grenadier is an active New York Corporation.”

13. In Response 12 of the 114 Response, Respondent Grenadier states: “To the best of my knowledge, during the last five years the Facility has been owned by Stevenson Commons Associates, L.P. Their address has been provided in Response 2.”

14. In Response 14 of the 114 Response, Respondent Grenadier provides, among other things, the following information about the four (4) steam/hot water boilers at the Facility:

No.	Type	Rating (Million BTU/hr)	Location
1	Eastmond/Federal PLW-265 residual oil firing	16.66	755 White Plains Road
2	Eastmond/Federal PLW-265 residual oil firing	16.66	755 White Plains Road
3	Eastmond/Federal PLW-265 residual oil firing	10.55	1850 Lafayette Avenue
4	Eastmond/Federal PLW-265 residual oil firing	10.55	1850 Lafayette Avenue

15. In Response 15 of the 114 Response, Respondent Grenadier states: "The type fuel fired on all boilers is # 6-fuel oil as indicated on a typical fuel ticket included as Attachment 3."

16. In Response 16 of the 114 Response, Respondent Grenadier indicates that each of the four (4) boilers started up in 1995.

17. An attachment to the 114 Response, identified as "Superintendent's Daily Checklist & Boiler Log" (Log), comprised of two (2) sets of identical logs each two (2) pages in length, identifies the site as Stevenson Commons located at 1850 Lafayette Avenue and identifies the period of time covered by the Logs as the week of July 30, 2007.

18. A separate attachment to the 114 Response contains copies of a number of records that indicate the amount of fuel purchased by Respondent Grenadier for Respondent Stevenson Commons.

19. In Response 19 of 114 Response, Respondent Grenadier does not provide the copies, requested in Question 19, of all semi-annual reports submitted to EPA and/or NYSDEC to certify compliance with the 0.5% sulfur content in residual fuel oil recorded and maintained for the past two (2) years. Alternatively, Respondent Grenadier states: "As I have been informed, the Air State Facility permit in Condition 28, item 28.2, requires the provision of such records 'upon request by regulatory agency'; we have not previously been requested to provide such information."

20. In Response 21 of the 114 Response, Respondent Grenadier states, among other things, the following: "Stevenson Commons has been utilizing fuel supplier certifications of maximum sulfur content in compliance with Section 60.42c:

[f]or compliance with Section 60.44c, the provision of paragraph (h) allowing fuel oil supplier certification is utilized; [s]ection 60.46c is not applicable based on paragraph (e) allowing fuel supplier certification; and [s]ection 60.48c compliance is practiced per paragraph (f) allowing fuel supplier certification for fuel sulfur content.”

21. Respondent Stevenson is a ‘person’ and Respondent Grenadier is a ‘person’ within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and are therefore subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

22. Respondents own and/or operate four (4) steam generating units within the meaning of 40 C.F.R. § 60.41c(a), each of which is an affected facility within the meaning of 40 C.F.R. § 60.40c(a).

**Gaetano LaVigna:** Environmental Engineer and Enforcement Officer, Air Compliance Branch, Division of Environmental Compliance and Assistance, EPA, Region 2.

As a fact witness, Mr. LaVigna is expected to testify as to how the EPA Clean Air Act Stationary Source Penalty Policy was used to arrive at the proposed penalty in this case. A narrative of his expected testimony in this regard is found in the section of the Prehearing Exchange entitled “Complainant’s Statement of how Proposed Penalty was Determined.”

Mr. Lavigna is also expected to testify as to Grenadier’s knowledge of the regulations because of its being previously named as a Respondent in a Compliance Order in which EPA found the same violations as those alleged in the current matter.

**Other Witnesses:** Complainant may call the following:

- a. Any witness called by Respondents.
- b. Any witness needed to authenticate exhibits.
- c. Any witness needed for impeachment.
- d. Any witness needed for rebuttal or to respond to testimony of Respondents' witnesses when such testimony has been disclosed by Respondents.
- e. Any witness whose identity may become known to Complainant after submittal of this witness list.

Except for the above, Complainant does not anticipate, at this time, the need to call any additional witness. However, Complainant respectfully reserves the right to call additional witnesses upon adequate notice to Respondents and this Court.

**(B) LISTING OF COMPLAINANT'S EXHIBITS**

In addition to the Complaint and Respondents Answer, copies of which have already been filed with the Court and which all parties presently possess, incorporated herein by reference, EPA intends to offer into evidence the following documents, copies of which are annexed:

- Complainant's Exhibit 1: U.S. Department of Justice's grant of EPA Region 2's request for waiver of the one year time limitation in Section 113(d) of the Clean Air Act ("CAA"), dated September 23, 2008.
- Complainant's Exhibit 2: September 20, 2005 Inspection Report from Dan Manasia, Environmental Scientist, to Ken Eng, Chief, Air Compliance Branch.



- Complainant's Exhibit 3: Tower Building Location and Apartment Designation Key Plan for the Stevenson Commons Facility.
- Complainant's Exhibit 4: Affidavit of Daniel Manasia, stating that during the inspection he conducted of the Stevenson Commons he requested the facility representative provide copies of records of fuel supplier certifications and records of amounts of fuel combusted each day, but the facility representative did not provide them. Following the inspection Mr. Manasia conducted a search of EPA's files and found no reports pertaining to the Stevenson Commons Facility at the following co-locations: 1850, 1856, 1860, 1870 and 1880 Lafayette Avenue, Bronx, NY; and 711, 721, 741 and 755 White Plains Road, Bronx, NY.
- Complainant's Exhibit 5: Copy of the Certificate to Operate, issued by the New York Department of Environmental Protection, Bureau of Environmental Compliance to Grenadier Realty Corp., for the facility located at 1850 Lafayette Avenue, Bronx, New York, provided to Daniel Manasia during the inspection of the Stevenson Commons Facility.
- Complainant's Exhibit 6: July 10, 2008 Stevenson Commons Site Visit Report from Dan Manasia, Environmental Scientist.
- Complainant's Exhibit 7: Compliance Order: In the Matter of Eastchester Heights, L.P., CAA-02-2007-1007, issued on June 28, 2007.
- Complainant's Exhibit 8: Conference Sign-In Sheet, July 27, 2007 Conference, involving Eastchester Heights, L.P, Grenadier Realty Corp., and EPA Region 2, held at U.S. EPA, 290 Broadway, New York, NY.
- Complainant's Exhibit 9: Section 114 Information Request Letter, to Jane Krieger, President, Grenadier Realty Corp., issued on June 22, 2007.
- Complainant's Exhibit 10: Response to the Section 114 Information Request Letter, from Grenadier Realty Corp., received on August 16, 2007.

- Complainant's Exhibit 11: Compliance Order: In the Matter of Stevenson Commons Associates, L.P., and Grenadier Realty Corp., CAA-02-2007-1019, issued on September 21, 2007.
- Complainant's Exhibit 12: November 8, 2007 email from Daniel Riesel, Esq., Counsel for Stevenson Commons Associates, L.P. and Grenadier Realty Corp., to Evans Stamatakis, Assistant Regional Counsel U.S. EPA, stating that Stevenson Commons complied with Compliance Order CAA-02-2007-1019.
- Complainant's Exhibit 13: Proposed Penalty Chart in Accordance with the Clean Air Stationary Source Penalty Policy for Violations of NSPS Subpart Dc, in the Matter of Stevenson Commons Associates, L.P., and Grenadier Realty Corp., CAA-02-2008-1220.
- Complainant's Exhibit 14: Clean Air Act Stationary Source Penalty Policy.

Complainant reserves the right to supplement its exhibit list upon adequate notice to Respondents and to this Court, including, but not limited to, the right to introduce additional or supplementary evidence in response to matters raised or introduced by Respondents in its Prehearing Exchange.

In the event that EPA's continuing review of Respondents' documents, in preparation for this case, reveals additional violations, Complainant respectfully reserves the right, upon adequate notice to Respondents and this Court, to move for Amendment of the Complaint for: (1) presentation of additional testimony substantiating such additional violations; and (2) introduction of additional documentary evidence substantiating such additional violations.

(C) **STATEMENT EXPRESSING DESIRED PLACE FOR THE HEARING AND ESTIMATED TIME NEEDED TO PRESENT DIRECT CASE**

Pursuant to 40 C.F.R. §§ 22.19(d) and 22.21(d), Complainant respectfully requests that the Hearing be held at Complainant's office located at the U. S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.

Complainant estimates that it will need approximately two (2) full days to present its direct case.

The Prehearing Order further requires that Complainant submit:

(D) **COMPLAINANT'S STATEMENT OF HOW PROPOSED PENALTY WAS DETERMINED**

Respondents' violations alleged in Counts 1 & 2 of the Complaint result in Respondents being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and December 11, 2008, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations which occur from January 30, 1997 through March 14, 2004; up to \$32,500 per day for violations which occurred from March 15, 2004 through January 12, 2009; and up to \$37,500 for violations which occurred after January 12, 2009. Part 19 provides that the

maximum civil penalty should be upwardly adjusted 10% for violations which occurred on or after January 30, 1997; further adjusted 17.23% for violations which occurred on or after March 15, 2004; and further adjusted 9.83% for violations which occurred after January 12, 2009, for a total of 38.78%.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

In order to implement the statutory requirements while ensuring their consistent application, EPA, on October 25, 1991, issued the Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy) based on the considerations listed in the CAA. The CAA Penalty Policy categorized the statutory factors into broad categories including: (1) the Gravity of the violations and (2) the Economic Benefit to the violator.

The proposed penalty of \$ 190,799 was prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in CAA Penalty Policy.

Below are short narratives explaining the reasoning behind the penalties proposed for each allegation in this Complaint, and the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

### **Gravity Based Penalty**

Count 1: Violations of 40 C.F.R. §§ 60.7, 60.48c(d), (e) and (j): Failure to submit semi-annual NSPS Subpart Dc reports and/or provide reports to the EPA Inspector.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for a failure to report. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violation alleged in this Count occurred over a period of thirteen years and ceased in July 2008 when the Facility submitted its first NSPS Subpart Dc report. The Statute of Limitations prohibits the assessment of penalties for violations occurring more than five years ago. Nine semi-annual reports were not submitted as required from January 30, 2004 through January 20, 2008. On July 21, 2008, Respondents began to fully comply with the reporting requirements by submitting the semi-annual report for the January 1, 2008 through June 30, 2008 reporting period. The CAA Penalty Policy directs that a penalty of \$50,000 be proposed for a violation that persisted 54 months. Therefore, EPA proposes an unaggravated and unadjusted gravity component for these violations of \$65,000.

The DCIA and Part 19 direct EPA to adjust the gravity component 10% for violations occurring before March 15, 2004; 28.95% for violations occurring on or after March 15, 2004; and 38.78% for violations occurring after January 12, 2009. The first of the nine reports for which EPA seeks penalties was due by January 30, 2004. Therefore, EPA proposes \$722, which is a 10% inflation adjustment for 1/9th of the penalty proposed for this violation. Eight of the nine reports for which EPA seeks penalties occurred after March 15, 2004, but before January 12, 2009. Therefore, EPA

proposes \$16,727, which is a 28.95% inflation adjustment for 8/9ths of the penalty proposed for this violation. The total DCIA and Part 19 inflation adjustment for this violation is \$17,449, resulting in a total proposed penalty of \$82,449 for Count 1.

Count 2: Violations of 40 C.F.R. § §§ 60.7, 60.48c(g) and (i): Failure to record and maintain records of daily or monthly fuel usage.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for late installation of required monitoring equipment and a \$5,000 - \$15,000 penalty for incomplete records. The violation involved a failure to install and operate monitoring equipment which resulted in an inability to comply with a recordkeeping regulation. Therefore, EPA proposes a \$15,000 penalty for this part of the gravity component for this Count.

The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violation alleged in Count 2 occurred over a period of twelve years ceasing on November 8, 2007, the date when the appropriate monitoring equipment was installed. The Statute of Limitations prohibits the assessment of penalties for violations occurring more than five years ago. EPA proposes a length of time penalty for the 49 month noncompliance period (October 1, 2003 through November 8, 2007) alleged in this Count.

The CAA Penalty Policy proposes that a penalty of \$50,000 be added for a violation that persisted 49 months. Therefore, EPA proposes an unaggravated and unadjusted gravity component for these violations of \$65,000.

The DCIA and Part 19 direct EPA to adjust the gravity component 10% for violations occurring before March 15, 2004; 28.95% for violations occurring on or after

March 15, 2004; and 38.78% for violations occurring after January 12, 2009. The violations alleged in this Count occurred in periods of time before and after March 15, 2004, but not after January 12, 2009. Therefore, the inflation adjustment for the portion of this violation that occurred before March 15, 2004 is \$663 and the inflation adjustment for the portion of the violation that occurred on or after March 15, 2004, but before January 12, 2009 is \$16,897. The total DCIA and Part 19 inflation adjustment for this violation is \$17,560, resulting in a total proposed penalty of \$82,560 for Count 2.

### **Size of Violator**

The CAA Penalty Policy directs that a penalty be proposed which takes into account the size of violator, determined by the violator's net worth for corporations or net current assets for partnerships. EPA estimated the combined net worth of the Respondents to be between 5 and 20 million dollars. In such circumstances the CAA Penalty Policy directs that EPA propose a penalty for the size of violator of \$20,000. In accordance with the DCIA and Part 19, the inflation adjustment for the size of violator component of the gravity is \$5,790. EPA proposes a total size of violator component of \$25,790. The size of violator component of the penalty may be adjusted should information be discovered that indicates the Respondents' net worth is less or more than estimated.

### **Economic Benefit**

In addition to the Gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from non-compliance. The policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided

costs. The CAA Penalty Policy provides EPA with the discretion to not seek economic benefit where the benefit derived is less than \$5,000. In this instance EPA is using its discretion and will not seek penalties for the economic benefit of \$2,952 that EPA calculated Respondents realized because such benefit is de minimus.

(E) **STATEMENT REGARDING THE PAPERWORK REDUCTION ACT**

Information collection requirements associated with 40 C.F.R. Part 60 Subpart Dc, and 40 C.F.R. Part 70 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 *et seq.* Section 3512 of the PPA does not apply to this case because there have been no lapses of OMB approval during any time relevant to this proceeding. In addition, the relevant OMB control numbers appeared in the Code of Federal Regulations (CFR), 40 C.F.R. Part 9, for the entire relevant period of time. The OMB control number for 40 C.F.R. Part 60 Subpart Dc is 2060-0202. The OMB control number for 40 C.F.R. Part 70, the regulation under which the state promulgated its title V program, is 2060-0243.

Respectfully submitted,

  
Marie Quintin/Flaire Mills  
Office of Regional Counsel

Dated 3-19-09  
New York, New York



***In re Stevenson Commons Associates, L.P. and Grenadier Realty Corp.***  
**Docket No. CAA-02-2008-1220**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Complainant's Prehearing Exchange, dated March 19, 2009, in the following manner to the respective addressees listed below:

Original and One Copy

By Hand:

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

Copy by

Federal Express Overnight:

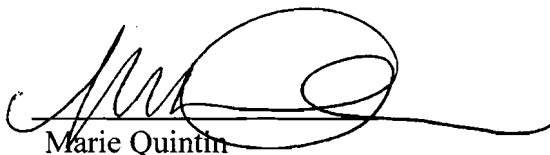
Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W.  
Suite 350  
Washington, DC 20005

Copy by

Federal Express Overnight:

Daniel Riesel, Esq.  
Sive, Paget & Riesel, P.C.  
260 Park Avenue  
New York, New York 10022-1906

Dated: March 19, 2009  
New York, New York

  
Marie Quintin