



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 26 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Stevenson Commons Associates, L.P. & Grenadier Realty
Corporation
CAA-02-2008-1220

Dear Ms. Kreger:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Stevenson Commons Associates, L.P. and Grenadier Realty Corporation, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the Act), § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 60, Subpart Dc (Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units), promulgated pursuant to Section 111 and 114 of the Act. The total amount of the penalty proposed by the Complaint is \$190,799.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.


Counsel designated to appear on behalf of the Complainant in this matter is Marie Quintin, who can be reached at (212) 637-3243 or by mail at the address listed below.

As stated in the section of the Complaint entitled "Settlement Conference," EPA is prepared to pursue settlement of this matter immediately.

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2008 OCT -1 PM 3:33
REGIONAL HEARING
CLERK

I encourage you or your attorney, if you are represented, to contact EPA counsel.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A
HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the
Administrative Assessment of Civil Penalties and the Revocation or
Suspension of Permits

Clean Air Act Stationary Source Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and
one copy of both the Complaint and Certificate of Service):

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

Counsel on behalf of EPA:

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

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

Robert Stanton, Director
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3254

Michelle Crew, Associate Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500

Sam Lieblich, Regional Air Pollution Control Engineer
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407

Louis Oliva, Regional Attorney
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 26 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Irvin Fisher, President
Stevenson Commons Associates, L.P.
755 White Plains Road
Bronx, New York 10473

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Stevenson Commons Associates, L.P. & Grenadier Realty
Corporation
CAA-02-2008-1220

Dear Mr. Fisher:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Stevenson Commons Associates, L.P. and Grenadier Realty Corporation, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act), § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 60, Subpart Dc (Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units), promulgated pursuant to Section 111 and 114 of the Act. The total amount of the penalty proposed by the Complaint is \$190,799.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

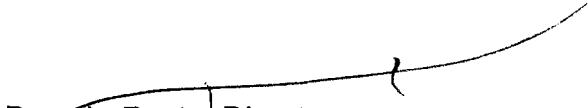
Counsel designated to appear on behalf of the Complainant in this matter is Marie Quintin, who can be reached at (212) 637-3243 or by mail at the address listed below.

As stated in the section of the Complaint entitled "Settlement Conference," EPA is prepared to pursue settlement of this matter immediately.

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGIONAL HEARING
OCT 1 11 31 08

I encourage you or your attorney, if you are represented, to contact EPA counsel.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A
HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the
Administrative Assessment of Civil Penalties and the Revocation or
Suspension of Permits

Clean Air Act Stationary Source Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and
one copy of both the Complaint and Certificate of Service):

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

Counsel on behalf of EPA:

Marie Quintin / Flaira Mills
Office of Regional Counsel, Air Branch
U.S. Environmental Protection
Agency, Region 2
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New York, New York 10007-1866

Daniel Riesel
Sive, Paget & Riesel, P.C.
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New York, New York 10022-1906

Robert Stanton, Director
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3254

Michelle Crew, Associate Counsel
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625 Broadway, 14th Floor
Albany, New York 12233-5500

Sam Lieblich, Regional Air Pollution Control Engineer
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407

Louis Oliva, Regional Attorney
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2008 OCT -1 PM 3:33
REGIONAL HEARING
CLERK

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

COMPLAINT
AND
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING

CAA-02-2008-1220

COMPLAINT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) to Stevenson Commons Associates, L. P. (Respondent Stevenson) and to Grenadier Realty Corporation (Respondent Grenadier) together known as the "Respondents" for violations of the Clean Air Act, 42 U.S.C § 7401 *et seq.* (CAA or the Act), at 42 U.S.C. § 7413(d), Section 113(d), and proposes the assessment of penalties in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in the matter, the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2, is duly delegated the authority to issue administrative Complaints on behalf of EPA Region 2,

for CAA violations that occurred in the States of New York and New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

EPA alleges that 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.

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 action in this matter.

Statutory and Regulatory Background

1. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

2. Section 113(d)(1)(B) of the Act, authorizes EPA to issue an administrative order against any person whenever, on the basis of any available information, the Administrator finds that such person has or is violating any requirements or prohibitions of titles III, IV-A, V, or VI of the Act including but not limited to a requirement or prohibition of any rule, order, waiver, permit or plan promulgated, issued or approved under the Act.

3. Section 302(e) of the Act defines the term “person” as an individual, corporation, partnership, association, state municipality, political subdivision of a State,

and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

4. Section 111(b)(1)(A) of the Act, authorizes the Administrator of EPA (Administrator) to publish a list of categories of stationary sources that the Administrator has determined "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare."

5. Section 111(a)(3) of the Act defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

6. Section 111(a)(5) of the Act defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

7. Section 111(e) of the Act states "once the standards of performance promulgated under the Act are effective, it is unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source."

8. Pursuant to Section 114(a)(1) of the Act, the Administrator may require owners or operators of emission sources to submit specific information regarding facilities, to establish and maintain records, to make reports, to sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

9. Pursuant to Sections 111 and 114 of the Act, EPA promulgated 40 C.F.R. Part 60 Subpart A, "New Source Performance Standards General Provisions" (NSPS General Provisions).

10. Pursuant to Sections 111 and 114 of the Act, EPA promulgated the Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. Part 60 Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c (NSPS Subpart Dc), 55 *Fed. Reg.* 37683 (September 12, 1990).

11. Pursuant to 40 C.F.R. § 60.1(a), the provisions of Part 60 apply to the owner or operator of any stationary source that contains an affected facility, the construction or modification of which is commenced after the date of publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

12. 40 C.F.R. § 60.2 defines "owner or operator" as "any person who owns, leases, operates, controls, or supervises an affected facility or stationary source of which an affected facility is part."

13. Pursuant to 40 C.F.R. § 60.7(f) an owner or operator subject to any NSPS regulation must maintain a file of all information required by applicable NSPS regulations in a permanent form suitable for inspection.

14. An owner or operator of an affected facility subject to NSPS Subpart Dc must comply with the requirements of 40 C.F.R. Part 60 Subpart A, unless otherwise specified in NSPS Subpart Dc. See 40 C.F.R. § 60.7(h).

15. 40 C.F.R. § 60.40c(a), defines an NSPS Subpart Dc "affected facility," as "each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 MW (100 million Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr)."

16. 40 C.F.R. § 60.41c defines steam generating unit,” as “a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system.” The definition also provides that the term “steam generating unit” does not include process heaters as defined in Subpart Dc.

17. 40 C.F.R. § 60.41c defines “process heater” as “a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.”

18. 40 C.F.R. § 60.41c defines “residual oil” as “crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396–78, 89, 90, 92, 96, or 98, ‘Standard Specification for Fuel Oils’ (incorporated by reference—see 40 C.F.R. § 60.17).”

19. Pursuant to 40 C.F.R. § 60.42c(d), an owner or operator of an affected facility that combusts oil must combust oil in an affected facility that contains greater than 0.5 weight percent sulfur.

20. Pursuant to 40 C.F.R. § 60.42c(h) and (h)(2), an owner or operator of any affected facility that combusts residual oil with a heat input capacity between 2.9 and 8.7 MW (10 and 30 million Btu/hr) may determine compliance with NSPS Subpart Dc emission or fuel oil sulfur limits based on a certification from the fuel supplier as described under 40 C.F.R. § 60.48c(f)(1), (2), or (3), as applicable.

21. Pursuant to 40 C.F.R. § 60.46c, owners or operators are provided with alternative methods for monitoring emissions of sulfur dioxide (SO₂).

22. Pursuant to 40 C.F.R. § 60.46c(e), the monitoring requirements of § 60.46c(a) and (d) do 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 the SO₂ standards based on fuel supplier certification as described under § 60.48c(f)(1), (2), or (3), as applicable.

23. Pursuant to 40 C.F.R. § 60.48c(d), an owner or operator of an affected facility subject to the NSPS Subpart Dc SO₂ emission limits, fuel oil sulfur limits, or percent reduction limits provided in 40 C.F.R. § 60.42c must submit reports to the Administrator.

24. Pursuant to 40 C.F.R. § 60.48c(e), an owner or operator of an affected facility, subject to NSPS Subpart Dc SO₂ emission limits, fuel oil sulfur limits, or percent reduction limits provided in 40 C.F.R. § 60.43c, must keep records and submit reports as required by paragraph 40 C.F.R. § 60.48c(d) including, when applicable, the information required by 40 C.F.R. § 60.48c(e)(11).

25. Pursuant to 40 C.F.R. § 60.48c(e)(11), an owner or operator of an affected facility must keep records of fuel supplier certifications if fuel supplier certification is used to demonstrate compliance.

26. In addition to records of fuel supplier certifications, 40 C.F.R. § 60.48c(e)(11) specifies that the report, submitted pursuant to 40 C.F.R. § 60.48c(d), must include a certified statement, signed by the owner or operator of the affected facility, that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

27. Pursuant to 40 C.F.R. § 60.48c(f)(2), a fuel supplier certification for residual oil must include the following information: (i) the name of the oil supplier;

(ii) the location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location; (iii) the sulfur content of the oil from which the shipment came (or of the shipment itself); and (iv) the method used to determine the sulfur content of the oil.

28. Prior to June 13, 2007, 40 C.F.R § 60.48c(g) provided that an owner or operator of an affected facility must record and maintain records of the amounts of each fuel combusted during each operating day.

29. On June 13, 2007 (72 Fed. Reg. 32710), EPA revised the recordkeeping requirements of 40 C.F.R. § 60.48c(g), in pertinent part, as follows:

40 C.F.R. § 60.48c(g)(1): except as provided under paragraphs (g)(2) and (g)(3) of this section, "the owner or operator of each affected facility shall record and maintain records of the amount of each fuel combusted during each operating day."

40 C.F.R. § 60.48c(g)(2): "As an alternative to meeting the requirements of paragraph (g)(1) of this section, the owner or operator of an affected facility that combusts only natural gas, wood, or fuels using fuel certification in § 60.48c(f) to demonstrate compliance with the SO₂ standards may elect to record and maintain records of the amount of fuel combusted each calendar month."

30. Pursuant to 40 C.F.R. § 60.48c(i), all records required under 40 C.F.R. § 60.48c, must be maintained by the owner or operator of the affected facility for a period of two (2) years following the date of such record.

31. Pursuant to 40 C.F.R. § 60.48c(j), the reporting period for the reports required under NSPS Subpart Dc is each six-month period and that all reports must be submitted to the Administrator and must be postmarked by the 30th day following the end of the reporting period.

Findings of Fact

32. Paragraphs 1- 31 are re-alleged and incorporated herein by reference.

33. Respondent Grenadier is a domestic business corporation registered in the State of New York.

34. Respondent Stevenson is a domestic limited partnership registered in the State of New York.

35. On August 25, 2005, pursuant to Section 114(a)(1) of the Act, an EPA inspector conducted an inspection (Inspection) of 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, with offices located at the latter address.

36. EPA conducted the Inspection to determine the Facility's compliance status with respect to NSPS Subparts A and Dc.

37. 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").

38. During the Inspection, the EPA inspector observed that the Facility was comprised of three (3) 24 story and six (6) six (6) story buildings.

39. 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.

40. During the Inspection, the EPA inspector requested the Facility Representative provide copies of records of fuel supplier certifications. In response to the request, the Facility Representative stated the Facility did not have fuel supplier certifications nor had it had ever obtained them.

41. During the Inspection, the EPA inspector requested the Facility Representative provide copies of records of the amounts of each fuel combusted each day. In response to the request, the Facility Representative indicated that the Facility had kept such records, but the Facility Representative did not provide the EPA Inspector with the records.

42. 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.

43. On June 22, 2007, pursuant to Section 114 of the Act, EPA issued a request for information (114 Request) to Grenadier Realty Corp seeking information concerning the ownership and compliance of the Facility with respect to the Act.

44. On August 16, 2007, Respondent Grenadier provided EPA with its response (114 Response) to the Section 114 Request.

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

46. 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.

47. 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 cited 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."

48. 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."

49. 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."

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

51. 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.”

52. 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

53. 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.”

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

55. 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.

56. 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.

57. 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."

58. 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."

59. On September 21, 2007, EPA issued an Administrative Compliance Order CAA-02-2007-1019 (Order), pursuant to § 113(a)(1) of the Act, requiring both Respondents to comply with all applicable NSPS Subpart Dc recordkeeping and reporting requirements for the steam generating units, affected facilities located at the Facility, including but not limited to 40 C.F.R. §§ 60.48c(d) and (g).

60. The Order required both Respondents to install, within 30 days of the Order's effective date, any equipment necessary to comply with the requirements of 40 C.F.R. § 60.48c(g).

61. On October 4, 2007 counsel for Respondents requested a conference concerning the violations alleged in the Order.

62. On October 30, 2007 EPA met with an employee of Respondent Grenadier counsel for Respondents, and the Respondents' environmental contractor.

63. By email dated November 8, 2007, counsel for Respondents informed EPA that fuel meters had been installed on each boiler servicing Stevenson Commons.

Count 1

64. Paragraphs 1 through 63 are repeated and re-alleged as if set forth fully herein.

65. 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.

66. 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).

67. Respondents, as owner and/or operator of four (4) affected facilities, are subject to the NSPS General Provisions and NSPS Subpart Dc.

68. By failing to submit semi-annual NSPS Subpart Dc reports from January 2004 through July 2008, Respondents were unable to fully demonstrate compliance with 40 C.F.R. § 60.42c limits for that period.

69. Respondents' failures to submit semi-annual NSPS Subpart Dc reports from January 2004 through July 2008, are violations of 40 C.F.R. §§ 60.48c(d), (e) and (j), regulations promulgated pursuant to §§ 111 and 114 of the Act.

70. Respondents' violations of 40 C.F.R. §§ 60.48c(d), (e) and (j) are violations of §§ 111 and 114 of the Act.

Count 2

71. Paragraphs 1 through 70 are repeated and re-alleged as if set forth fully herein.

72. Respondents' failure to install and use meters, which would enable monitoring of fuel use, resulted in Respondents' inability to record and maintain records of the amount of each fuel combusted at each affected facility.

73. Respondents' failures to record and maintain records of daily or monthly, as appropriate, fuel usage from October 2003 through November 2007 are violations of 40 C.F.R. §§ 60.7, 60.48c(g), and 60.48c(i), regulations promulgated pursuant to §§ 111 and 114 of the Act.

Proposed Civil Penalty

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 and February 13, 2004 EPA adopted regulations entitled Adjustment of Civil Monetary Penalties for Inflation, 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 that occurred on or after January 30, 1997 and up to \$32,500 for violations that occurred on or after March 15, 2004. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997 and further adjusted 17.23% for violations that occurred on or after March 15, 2004 for a total of 28.95%.

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. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint, of **\$190,799**.

Respondents' violations alleged in Counts 1 and 2 result in Respondents being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing the penalty.

Below are short narratives explaining the reasoning behind the penalties proposed 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 Penalties

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 and 28.95% for violations occurring on or after March 15, 2004. 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. Therefore, EPA proposes \$16,727, which is a 28.95% inflation adjustment for the 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: Violation 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 of 49 months for the noncompliance period alleged in this Count of October 1, 2003 through November 8, 2007.

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 and 28.95% for violations occurring on or after March 15, 2004. The violations alleged in this Count occurred in periods of time before and after March 15, 2004. 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 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 that 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 the discretion for not seeking 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 Respondents realized because such benefit is de minimus.

Notice of Opportunity to Request a Hearing

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing to: (1) contest any material facts set forth in the Complaint; (2) contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

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

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement that will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Flaire Mills, at (212) 637-3198 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

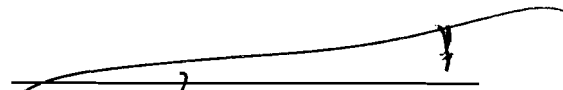
Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s), which appear on the first page of this Complaint. The check must be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: SEPTEMBER 26, 2008



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

TO: Irvin Fisher, President
Stevenson Commons Associates, L.P.
755 White Plains Road
Bronx, New York 10473

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

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing Docket Number CAA-02-2008-1220, a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (64 *Federal Register* 40176 [July 23, 1999]), Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits and a copy of the Clean Air Act Statutory Source Civil Penalty Policy, by certified mail, return receipt requested to: Mr. Irvin Fisher, President, Stevenson Commons Associates, L.P., 755 White Plains Road, Bronx, NY 10473 and to Ms. Jane H. Kreger, President, Grenadier Realty Corporation, 1230 Pennsylvania Avenue, Brooklyn, NY 11239. I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: OCT 1 - 2008
New York, New York


Orelia Lewis