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REGIONAL HEARINGS
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

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

&

Grenadier Realty Corp.
Brooklyn, New York

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)

Honorable Susan L. Biro
Presiding Officer

REBUTTAL PREHEARING
EXCHANGE

CAA-02-2008-1220

Complainant, the Director of the Division of Enforcement and Compliance Assistance ("DECA") of the United States Environmental Protection Agency ("EPA"), Region 2, submits this rebuttal prehearing exchange pursuant to the "Prehearing Order," dated December 2, 2008, issued by the Honorable Susan L. Biro Chief Administrative Law Judge.

COMPLAINANT'S EXHIBITS

1. Complainant incorporates by reference Exhibit B and Exhibit C¹ that Respondents have submitted in their April 9, 2009 Prehearing Exchange, as if presented herein.

¹ Note Respondents refer to Exhibit B in their April 9, 2009 Prehearing Exchange as "[d]ocuments submitted in furtherance of 2007 compliance proceedings" and Exhibit C as "[f]inancial documents relating to Stevenson" however, the documents are incorrectly labeled, i.e. Exhibit B contains financial documents relating to Stevenson and Exhibit C contains documents submitted as part of Respondents' Response to the Section 114 Information Request Letter, received on August 16, 2007.

EPA RESPONSES TO RESPONDENTS' NARRATIVE STATEMENTS

Pursuant to paragraph 4 of the December 2, 2008 Prehearing Order, Complainant submits the following responses to Respondents' narrative statements (the text in parentheses followed by page number(s) are direct quotes from Respondents' April 9, 2009 Prehearing Exchange):

- A. "It is virtually impossible to obtain fuel oil 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. 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." (pgs. 1-2)

EPA denies and disputes Respondents' argument that the reporting and record keeping regulations set forth in the Complaint are made superfluous by the New York State regulations. The regulations address the sale of fuel, not the use of fuel and should not be construed as making it impossible for Respondents or any New York City facility to purchase fuel with greater than 0.3% sulfur content from outside New York City or by a supplier not in compliance with New York State regulations for use.

- B. "[W]e respectfully suggest that any violations that may be found in these proceedings would have no adverse environmental impact, were not intentional and did not result in any economic gain to the Respondents." (pg. 2)

In the administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint"), issued September 26, 2008, EPA states that the Clean Air Act (CAA or the Act) Penalty Policy provides EPA the discretion for not seeking economic benefit where the benefit derived is less than \$5000. The Compliant also states Respondents

realize an economic benefit of \$2,953, but in this instance EPA is using its discretion and will not seek penalties for the economic benefit.

- C. "Contrary to the assertion in the Complainant's Penalty Policy calculations, Stevenson's balance sheet has a net negative balance due to its obligation to provide below market house, amongst other factors. Ultimately, any fine assessed will burden Stevenson and be counterproductive to the objectives pursuant to which Stevenson was organized." (pg. 2)

Respondents submit financial documents relating to Respondent Stevenson as Exhibit C.² The only document included is an uncertified "Independent Auditors' Report" for the year ending December 31, 2007. EPA finds that the information provided is not sufficient to support an ability to pay determination, and therefore, fails to provide support of the assertion stated in paragraph 14 of Respondents' Answer to Complaint (Answer), dated October 30, 2008.

- D. "[W]hen the violations charged herein were called to the attention of the Respondents, almost two years ago, Respondents took action that satisfied the Region that they were in full compliance." (pg. 2)

Respondents were put on notice of the reporting and record keeping violations on June 22, 2007. Respondents did not come into compliance with the recordkeeping requirements until November 8, 2007, when they installed ISTECH fuel meters on each boiler servicing Stevenson Commons. Furthermore, Respondents did not come into full compliance with the reporting requirements until July 21, 2008 when they submitted two semi-annual reports, the first of which was due no later than January 30, 2008 and the second of which was due no later than July 30, 2008.

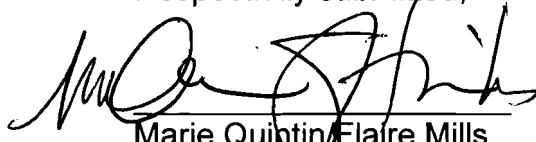
² Note in Respondents' April 9, 2009 Prehearing Exchange, the financial documents relating to Respondent Stevenson are included under Exhibit B, not Exhibit C as labeled.

Complainant has requested additional documents from Respondents and, if such documents are not produced, EPA anticipates attempting to seek them through a motion pursuant to 40 C.F.R. Part 22. Once such documents are received, EPA further anticipates moving this Court for an order permitting such documents to be included as part of Complainant's overall prehearing exchange. The documents that Complaint seeks are the following:

- (a) For Stevenson Commons Associates and Grenadier Realty Corp., federal income tax returns including all schedules and attachments for the last three years;
- (b) For Stevenson Commons Associates and Grenadier Realty Corp., complete year-end financial statements, including the auditor's letter, balance sheet, income statement, statement of cash flows and notes for the last three fiscal years;
- (c) If the 2008 tax returns and audited financial statements are not yet available for Stevenson Commons Associates and/or Grenadier Realty Corp., provide all available financial documentation, including but not limited to, an income statement and a balance sheet for the year ending December 31, 2008;
- (d) For Stevenson Commons Associates and Grenadier Realty Corp., provide financial documentation outlining the companies' financial positions at the end of the first quarter of 2009, including but not limited to, an income statement and a balance sheet for the period ending March 31, 2009;
- (e) For Stevenson Commons Associates and Grenadier Realty Corp., documentation regarding the low income housing credit, including but not limited to Form 8609, Low-Income Housing Credit Allocation Certification;
- (f) For Stevenson Commons Associates and Grenadier Realty Corp., documentation regarding the current market value of the real estate owned by each company;
- (g) For Stevenson Commons Associates and Grenadier Realty Corp., a current corporate map and/or organization chart, including detailed information on corporate ownership and officers, and a list of partners and shareholders for each company;
- (h) For the property at the center of this litigation, provide ownership documentation. With regard to each owner, explain the degree of the owner's involvement in the management of the property;
- (i) Explain the relationship between Stevenson Commons Associates, L.P. and Grenadier Realty Corp. and provide copies of all active contracts between the two entities.

Dated: 4/22/09
New York, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marie Quintin Flaire Mills', written over a horizontal line.

Marie Quintin Flaire Mills
Office of Regional Counsel
290 Broadway, 16th Floor
New York, New York 1007
212-637-3243/3198

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

CERTIFICATE OF SERVICE

I, Marie T. Quintin, certify that the foregoing Complainant's Rebuttal Prehearing

Exchange was sent this day in the following manner to the 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, NY 10007-1866

Copy by

Federal Express Overnight:

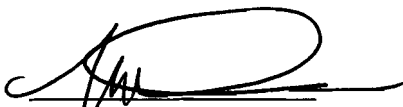
The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
1099 14th Street, N.W.
Suite 350
Washington, D.C. 20005

Copy by Certified Mail,

Federal Express Overnight:

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

Dated: 4/22/09
New York, New York


Marie Quintin