

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

DEC - 7 2009

In the Matter of:)
)
Village on the Common Realty, LLC)
d/b/a Eco Built Communities)
133 Pearl Street, Suite 400)
Boston, MA 02110)
)
Respondent.)
)
Action for Class II Civil Penalty)
Under Section 309(g) of the Clean Water Act)

Docket No. EPA ORC
CWA-01-2009-0067 Regional Hearing Clerk

CONSENT AGREEMENT
AND FINAL ORDER

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DEC - 7 2009

EPA ORC
Office of Regional Hearing Clerk

CONSENT AGREEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with 40 C.F.R. § 22.18 of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

I. INTRODUCTION

2. Complainant, the United States Environmental Protection Agency ("EPA"), Region 1, initiated this proceeding against Respondent, Village on the Common Realty, LLC, d/b/a Eco Built Communities ("VOTC"), by issuing an administrative complaint ("Complaint"), pursuant to Section 309(g) the CWA, on July 1, 2009.

3. The complete factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Complaint.

4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.

5. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice and opportunity to comment on the proposed penalty from July 7, 2009 through August 5, 2009.

II. TERMS OF SETTLEMENT

6. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors and assigns.

7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and also waives any defenses it may have as to jurisdiction and venue.

8. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint.

9. Without admitting or denying the facts and violations alleged in this CAFO, Respondent hereby consents to the terms of this CAFO and to the issuance of the Final Order included with this Consent Agreement without further adjudication.

10. By its signature on this Consent Agreement, Respondent certifies that it has corrected the alleged violations cited in the Complaint.

11. Section 309(g) of the CWA authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation of Sections 301(a) and 308 of the CWA, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between March 15, 2004 and January 12, 2009 are subject to a penalty of up to \$11,000 per day of violation with a maximum penalty of \$177,500.

12. Taking into account the particular facts and circumstances of this matter, with specific reference to the penalty factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), particularly Respondent's "ability to pay" the proposed penalty, Complainant has determined that it is fair and proper that Respondent pays a total civil penalty in the amount of \$2,000 in settlement of this matter.

13. Respondent shall pay the civil penalty set forth in this CAFO no later than 10 calendar days after the final date of this CAFO (as described below in Paragraph 22).

14. Respondent shall make the penalty payment by submitting a bank, cashier's or certified check, payable to the order of the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note the name ("In the Matter of: Village on the Common Realty, LLC, d/b/a Eco Built Communities") and docket number ("CWA-01-2009-0067") of this matter on the payment check, and shall provide copies of the check, along with a cover letter to:

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, MA 02114-2023

and:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (SEL)
Boston, MA 02114-2023

15. Failure by Respondent to pay in full the civil penalty amount set forth in this CAFO shall subject Respondent to a civil action to collect the assessed penalty, plus interest at currently prevailing rates from the date of issuance of the Final Order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid at the beginning of each quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CAFO shall not be subject to review.

Additional Provisions

16. All penalties, interest, and other charges shall represent civil penalties assessed by EPA, and shall not be deductible for federal tax purposes.

17. Compliance with this CAFO, including payment of the penalties, interest, or other charges, does not waive, suspend or modify Respondent's continuing obligation to comply with the CWA, and with other applicable federal, state or local laws, regulations or requirements, including any separate compliance order issued under Section 309(a) of the CWA concerning the violations alleged in this CAFO.

18. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial or administrative civil penalties pursuant to Sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for all past violations of the CWA specifically alleged herein.


19. Issuance of this CAFO does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b) and (c) of the CWA, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the CWA, 33 U.S.C. § 1364.

20. Except as described in Paragraph 15, each party shall bear its own costs and fees in this action.

21. Each undersigned representative of the parties to this CAFO certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

THE UNDERSIGNED PARTY enters into this CAFO for: In the Matter of: Village on the Common Realty, LLC, d/b/a Eco Built Communities, Docket No. CWA-01-2009-0067

For Village on the Common Realty, LLC:


Name: Steve Goodman
Title: Manager
Company: Village on the Common Realty LLC

11/06/09
Date

THE UNDERSIGNED PARTY enters into this CAFO for: In the Matter of: Village on the Common Realty, LLC, d/b/a Eco Built Communities, Docket No. CWA-01-2009-0067


For U.S. EPA, Region 1:

Sam Silverman, acting for
Susan Studlien
Director
Office of Environmental Stewardship
U.S. EPA, Region 1

11-23-09
Date

III. FINAL ORDER

22. Pursuant to Section 309(g) of the CWA, the above Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Order shall become final thirty (30) days from today.



Jill T. Metcalf
Acting Regional Judicial Officer
U.S. EPA, Region 1



Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

RECEIVED

2009 DEC -1 P 1:55

December 1, 2009

EPA ORC
OFFICE OF
RECORDS & HEARING CLERK

Via Hand Delivery

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (Mail Code: RAA)
Boston, MA 02114-2023

RE: In the Matter of: Village on the Common Realty, LLC, d/b/a Eco Built
Communities
Docket No. TSCA-01-2009-0067

Dear Ms. Lao-Ruiz:

I enclose for filing in the above-referenced matter the original and one copy of the Consent Agreement and Final Order and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin
Enforcement Counsel

Enclosures

cc: Steven E. Goodman

In the Matter of: Village on the Common Realty, LLC, d/b/a Eco Built Communities
Docket No. CWA-01-2009-0067

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Consent Agreement and Final Order to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,
by hand-delivery:

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (Mail Code: RAA)
Boston, MA 02114

One copy, by Certified Mail,
Return Receipt Requested:

Steven E. Goodman
Manager
Village on the Common Realty, LLC
d/b/a Eco Built Communities
133 Pearl Street, Suite 400
Boston, MA 02110

Dated: _____

12/01/09



William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (Mail Code: SEL)
Boston, MA 02114

Ray Ledoux

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Judy Lao for William Chin 12/7/09
Name of Case Attorney Date

in the ORC (RAA) at 918-1454
Office & Mail Code Phone number

Case Docket Number CWA-01-2009-0067

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Steven Goodman Manager
Village on the Common Realty d/b/a ECO Built Communities
133 Pearl St. Suite 400
Boston, MA 02110

Total Dollar Amount of Receivable \$ 2,000.00 Due Date: 12/11/09
SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance Ray LeDoux

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number _____