



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL 7005 3110 0003 6266 0455 **AUG 20 2007**  
RETURN RECEIPT REQUESTED

Mr. William W. Toole, Esq.  
Robinson Bradshaw & Hinson  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246

SUBJ: Consent Agreement and Final Order  
Docket No. CWA-04-2007-4511(b)  
Gandy Communities, Inc.  
Villages at Parkside  
Gastonia, North Carolina

Dear Mr. Toole:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or problems, please contact Ms. Susan Pope at (404) 562-9770.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick".

Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: North Carolina Department of Natural  
Resources, Division of Water Quality  
North Carolina Department of Natural  
Resources, Division of Land Resources  
Gaston Natural Resources Department

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
GANDY COMMUNITIES, INC. )  
VILLAGES AT PARKSIDE ) DOCKET NO. CWA 04-2007-4511(b)  
(FORMERLY RIVER RIDGE SUBDIVISION) )  
GASTONIA, NORTH CAROLINA )  
\_\_\_\_\_ )

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *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*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Management Division, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch of EPA, Region 4 ("Complainant").

II. Allegations

3. Gandy Communities, Incorporated ("Respondent"), is a corporation duly organized and existing under the laws of the State of North Carolina and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At times relevant to this action, Respondent owned and/or operated a construction site known as Villages at Parkside ("Facility") located at Neal Hawkins Road, Gastonia, North Carolina.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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EPA REGION IV

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the State of North Carolina through the Department of Environment and Natural Resources (“NCDENR”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System*, Permit No. NCG010000 (“Permit”) in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was effective October 1, 2001, and expires September 30, 2006.

8. The NCDENR Division of Land Resources, Land Quality Section or an approved local program, in this case the Gaston Natural Resources Department (“GNRD”), is responsible for the issuance, compliance and enforcement of North Carolina General Statute 113A-54.1, the rules adopted by the North Carolina Sedimentation Control Commission, and the issuance of the Permit upon submission and approval of an Erosion and Sediment Control Plan (“Plan”).

9. On September 20, 2004, Respondent submitted a Plan for the Facility to the GNRD seeking approval of the Plan and coverage under the NCDENR Permit. The GNRD approved the Plan and sent Respondent its approval along with a copy of the Permit, with Permit coverage commencing on January 3, 2005.

10. Part I.A.2 of the Permit requires the Permittee to implement the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the Permit.

11. Part I.B.1 of the Permit requires the Permittee to inspect all erosion and sedimentation control facilities at least once every seven calendar days and within 24 hours after any storm event greater than 0.5 inches of rain per 24- hour period. A rain gauge shall be maintained on the site and a record of the rainfall amounts and dates shall be kept by the Permittee.

12. Part I.B.2 of the Permit requires the Permittee to inspect all storm water runoff discharges at the same frequency as the erosion and sedimentation control facilities and to take corrective action immediately to control the discharge of sediments if any visible sedimentation leaves the disturbed limits of the site.

13. Part I.B.3 of the Permit requires the Permittee to keep a record of inspections, to be made available to NCDENR or its authorized agent upon request. Such record shall include visible sedimentation found outside the disturbed limits of the site, a brief explanation of measures taken to control future releases, and measures taken to clean up sediment beyond the disturbed limits of the site.

14. Part I.C.1 of the Permit requires the Permittee to comply with Final Limitations and Controls specified for storm water discharges once disturbance has begun on the site until completion of construction or development and establishment of a permanent groundcover.

15. Part I.C.2 of the Permit requires the Permittee to provide operation and maintenance necessary to operate storm water controls at optimum efficiency.

16. Part II.B.1 of the Permit requires the Permittee to comply with all conditions of the Permit.

17. Part II.B.2 of the Permit requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment.

18. Part II.C.1 of the Permit requires the Permittee to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the Permit.

19. On April 6, 2006, representatives of EPA in conjunction with the GNRD performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the Facility in accordance with the CWA, the regulations promulgated thereunder at 40 Code of Federal Regulations ("C.F.R.") § 126.26, and the Permit. A representative of Respondent was unable to participate in the CSWEI.

20. As a result of the CSWEI, EPA Region 4 has determined that Respondent discharged storm water associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

21. As a result of the CSWEI, EPA alleges the following:

A. The Plan was not implemented in accordance with Part I.A.2 of the Permit. At the time of the CSWEI, silt fencing was not installed consistent with the requirements of the approved Plan in the eastern and southern portions of the Facility near weirs 11 and 26. Rip rap may not have been installed as required by the Plan in areas near risers 1 and 2.

B. The site representative was unable to participate in the CSWEI, therefore, no inspection records were reviewed at the time of the CSWEI. Respondent may not have performed inspections as required by Part I.B.1, Part I.B.2 and Part I.B.3 of the Permit. The rain gauge required by Part I.B.1 of the Permit was not apparent to EPA during the CSWEI.

C. The final limitations and controls specified for storm water discharges were not met in accordance with Part I.C.1 of the Permit. Respondent failed to provide operation and maintenance necessary to operate storm water controls at optimum efficiency as required by Part I.C.2 and Part II.C.1 of the Permit and failed to comply with all conditions of the Permit. The Plan which GNRD approved did not contain the directional flow of storm water, the slope, or the name of the receiving water. Best Management Practices (“BMPs”) were either not maintained or inadequately installed resulting in ineffective prevention of sediment loss as evidenced by: (1) silt fencing on the eastern and southern portions of the site near weirs 11 and 26; (2) 28 sediment traps, especially on the northern and eastern (near risers 1 and 2) and the southern (near weir 26) portions of the Facility; (3) check dams in the northern, middle and southern portions of the Facility; (4) lack of or inadequate rip rap near risers 1 and 2; (5) lack of stabilization on several slopes and in denuded areas near check dams, at risers 1 and 3, and at weirs 11 and 26; (6) lack of outlet protection at the outfalls; and (7) the road crossing in the wetland area on the southeastern portion of the Facility and the filling of drainage areas/creeks on the northern section.

D. All reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment were not taken in accordance with Part II.B.2 of the Permit. Discharges were occurring or had occurred at: (1) improperly installed or maintained silt fencing on the eastern and southern portions of the Facility near weirs 11 and 26; (2) sediment traps in the eastern and southern portions of the Facility; (3) check dams in the northern, middle, and southern portions of the Facility; (4) unstabilized slopes and denuded areas near check dams, at risers 1 and 3, and at weirs 11 and 26; (5) unprotected outlets; and (6) the road crossing in the wetland area on the southeastern portion of the Facility.

22. Therefore, Complainant alleges that Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with Part I.A.2, Part I.B.1, Part I.B.2, Part I.B.3, Part I.C.1, Part I.C.2, Part II.B.2, and Part II.C.1 of the Permit and also for discharges not authorized by the Permit.

### **III. Stipulations and Findings**

23. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

24. Solely for the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

25. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

26. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

27. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for knowingly submitting false information, including the possibility of fines and/or imprisonment.

28. EPA reserves the right to assess and collect any and all civil penalties for any violation alleged herein solely to the extent that any information or certification provided by Respondent to Complainant in connection with this CA/FO was materially false or inaccurate at the time such information or certification was provided to EPA.

29. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and resolves a matter in dispute, and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

30. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R Part 19, and considering the nature of the alleged violations and other relevant factors, EPA has determined that Twenty-Five Thousand Dollars (\$25,000.00) is an appropriate civil penalty to settle this action.

31. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency  
Cincinnati Operations Accounting  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099.

32. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Management Division  
Water Programs Enforcement Branch  
Gulf Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960.

33. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

34. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

35. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a 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 (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

## **V. General Provisions**

36. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA; provided, however that this CA/FO fully resolves any and all claims EPA has or may have relating to the allegations specifically made herein..

37. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit, except for those violations specifically alleged in this CA/FO, and Respondent waives no defense to such claims.

38. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

39. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

40. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

41. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

42. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

43. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.



For Complainant:

Judy K. Marshall  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960  
(404) 562-9533

For Respondent:

William W. Toole  
Robinson Bradshaw & Hinson  
101 North Tryon St. Suite 1900  
Charlotte, North Carolina 28246  
((704) 377-2536.

44. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

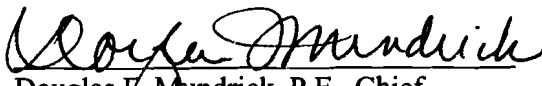
45. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

#### **VI. Effective Date**

46. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

#### **AGREED AND CONSENTED TO:**

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. EPA Region 4

Date: 7/3/07

For RESPONDENT, GANDY COMMUNITIES, INC.:

By: Phil M. Gandy, Jr.  
NAME: Phil M. Gandy Jr  
TITLE: Vice President

Date: 6/14/07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

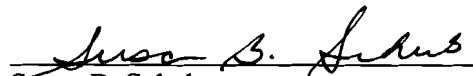
IN THE MATTER OF: ) ADMINISTRATIVE ORDER  
)  
GANDY COMMUNITIES, INC. )  
VILLAGES AT PARKSIDE ) DOCKET NO. CWA 04-2007-4511(b)  
(FORMERLY RIVER RIDGE SUBDIVISION) )  
GASTONIA, NORTH CAROLINA )  
\_\_\_\_\_ )

**FINAL ORDER**

In accordance with the *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*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/16/07

  
\_\_\_\_\_  
Susan B. Schub  
Regional Judicial Officer

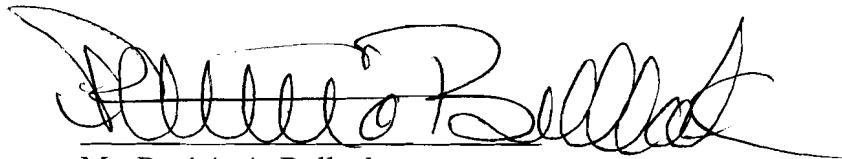
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Gandy Communities, Inc., Docket No. CWA-04-2007-4511(b)** (filed with the Regional Hearing Clerk on AUG 20 2007, 2007) was served on AUG 20 2007, 2007, in the manner specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall, Esq.  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

By certified mail,  
return receipt requested: William W. Toole, Esq.  
Robinson Bradshaw & Hinson  
101 North Tryon St. Suite 1900  
Charlotte, North Carolina 28246  
(704) 377-2536.

Coleen Sullins, Director  
Division of Water Quality  
North Carolina Department of Environment and Natural Resources  
1617 Mail Service Center  
Raleigh, NC 27699-1617



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 6/27/07  
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Villages At Parkside, GA Stone A, NC  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 25,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-4511(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

WMD

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |   |
|--|---|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |  |   |
|--|---|
| 1. Originating Office<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|