



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 28 2013

CERTIFIED MAIL 70113500000320640307  
RETURN RECEIPT REQUESTED

Mr. James S. Grauley  
Manager  
Edgewood Townhomes, LP  
1718 Peachtree Street, NW, Suite 684  
Atlanta, Georgia 30309

Re: Consent Agreement and Final Order No. CWA-04-2013-4502(b)  
Edgewood Townhomes at Hutchinson Street  
Atlanta, Georgia

Dear Mr. Grauley:

Enclosed, please find a fully executed copy of the Consent Agreement and Final Order finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Administrator. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Kenneth Kwan at (404) 562-9752 or via e-mail at [kwan.ken@epa.gov](mailto:kwan.ken@epa.gov). Legal inquiries should be directed to Mr. Wayne Lee, Associate Regional Counsel at (404) 562-9523.

Sincerely,

A handwritten signature in black ink that reads "James D. Giattina, Jr." with a stylized flourish at the end.

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Ms. Linda MacGregor  
Georgia Environmental Protection Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
EDGEWOOD TOWNHOMES, LP ) CONSENT AGREEMENT AND  
EDGEWOOD TOWNHOMES ) FINAL ORDER  
AT HUTCHINSON STREET )  
ATLANTA, GEORGIA )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2013-4502(b)

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HEARING CLERK

2013 MAY 28 PM 2:37

RECEIVED  
EPA REGION IV

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. 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 Protection Division of the EPA, Region 4 (“Complainant”).

**II. Allegations**

3. At all times relevant to this action, Edgewood Townhomes, LP (“Respondent”), is a limited partnership duly registered and existing under the laws of the State of Georgia and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated a construction site known as Edgewood Townhomes at Hutchinson Street (“Development”) located at 150 Hutchinson Street, in Atlanta, Georgia.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), 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.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. EPA has granted the State of Georgia, through the Georgia Environmental Protection Division ("GAEPD"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. GAEPD issued the *Authorization to Discharge Under The National Pollutant Discharge Elimination System Stormwater Discharges Associated With Construction Activity For Stand Alone Construction Projects*, Permit No. GAR100001 ("Permit"), in accordance with the Georgia Water Quality Control Act (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964), the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6, and the CWA. The Permit was effective August 1, 2008, and shall expire on July 31, 2013. Coverage under the Permit is obtained by submitting a Notice of Intent ("NOI") to GAEPD.

8. The Permit is a Georgia statewide NPDES general permit governing stormwater point source discharges associated with construction activities including clearing, grading and excavation activities except operations that result in the disturbance equal to or greater than one acre of total land area which are not part of a larger common plan of development or sale.

9. On June 21, 2010, the Respondent submitted to GAEPD an NOI for its Development requesting permit coverage.

10. Part III.D.2 of the Permit states that the failure to properly design, install or maintain best management practices ("BMPs") shall constitute a violation of the Permit for each day on which such failure occurs.

11. Part III.D.4 of the Permit requires BMPs to be designed, installed and maintained to prevent stormwater runoff discharges from disturbed areas of the construction site from exceeding the nephelometric turbidity unit ("NTU"). This NTU value of 75 was selected from Appendix B of the Permit. Part III.D.4 also provides for a separate violation for each day such discharges exceed the NTU value of 75.

12. Part IV.D.2 of the Permit requires the Erosion, Sedimentation and Pollution Control Plan ("Plan") to identify the locations of each permitted stormwater outfall on a site map.

13. Part IV.C of the Permit requires the Plan to be amended if the Plan proves to be ineffective in eliminating or significantly minimizing pollutants.

14. Part V.L 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 and the Plan. Proper operation and maintenance also includes the operation of backup or auxiliary facilities or similar systems (i.e., alternative BMPs and/or high performance BMPs), installed by a permittee only when necessary to achieve compliance with the conditions of the Permit.

15. On February 4, 2011, representatives of the EPA, in conjunction with the City of Atlanta, Bureau of Watershed Protection, performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Respondent’s Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26 and the GAEPD Permit.

16. As a result of the CSWEI, the EPA has determined that stormwater associated with industrial activity was discharged from the Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into Tributary of Sugar Creek.

17. During the CSWEI, the EPA inspectors observed the following:

- A. Double row silt fence was specified in the Plan. Only one row of silt fence was installed along the perimeter of the site in violation of Parts III.D.2 and V.L of the Permit.
- B. Wood chips along the perimeter silt fence were not treated with polyacrylamide as specified in the Plan in violation of Parts III.D.2 and V.L of the Permit.
- C. Thirteen stone check dams were specified in the Plan along the diversion channel to sediment pond number 1. Less than half of the check dams were in place in violation of Parts III.D.2 and V.L of the Permit.
- D. Of the few check dams in place, none have jute matting in place or have evidence of polyacrylamide treatment as specified in the Plan in violation of Parts III.D.2 and V.L of the Permit.
- E. A diversion channel was not stabilized with grass lining in accordance with the Plan in violation of Parts III.D.2 and V.L of the Permit.
- F. Riprap was specified in the Plan at the inlet of the sediment ponds. No riprap was observed at the inlet of sediment pond number 1 in violation of Parts III.D.2 and V.L of the Permit.



- G. Polyacrylamide treatment was specified on all sloped areas. No evidence of polyacrylamide treatment was observed on sloped areas in violation of Parts III.D.2 and V.L of the Permit.
- H. NTU samples were collected at two discharge points as outlined in the Plan during the CSWEI inspection. Sampling results for both discharge points exceeded the NTU standards set forth in Appendix B of the Permit in violation of Part III.D.4 of the Permit.

18. Stormwater monitoring results submitted by the Respondent to the EPA on November 30, 2011, documented discharges exceeding the 75 NTU standard on October 19, 2011, November 3, 2011, November 16, 2011, November 23, 2011 and November 28, 2011, at outfall number 1 and on November 28, 2011, at outfall number 3. Therefore, the existing BMPs on-site were not effective in meeting the 75 NTU standard in violation of Part III.D.4 of the Permit.

19. The Respondent's Plan and site map did not identify two construction entrances as permitted outfalls. Based on photos provided to the EPA as part of citizen complaints, the EPA has determined the Development had unauthorized discharges of sediment laden stormwater from the construction entrances on June 22, 2011, June 24, 2011, July 20, 2011, September 5, 2011, November 22, 2011, and January 21, 2012, in violation of Part IV.D.2 of the Permit.

20. The Respondent's Plan was amended to address deficiencies and was certified by a professional engineer on October 23, 2011. However, photos provided to the EPA as part of citizen complaints verify sediment runoff discharging from the development on November 22, 2011, in violation of Part IV.C of the Permit.

21. The Respondent's failure to eliminate or significantly minimize pollutant discharges constitute violations of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), and with the GAEPD Permit.

22. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the GAEPD Permit and also for discharges not authorized by the GAEPD Permit.

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

23. Complainant and the 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. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above. Further, Respondent's settlement of this matter shall not be deemed as admission of liability.

25. The 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. The 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, the 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. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

28. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

29. Complainant and the 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 that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

30. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that forty thousand dollars (\$ 40,000) is an appropriate civil penalty to settle this action.

31. The 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 the Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000



32. At the time of payment, the 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  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
Clean Water Enforcement Branch  
Municipal and Industrial Enforcement Section  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

34. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the 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 the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. 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 the EPA.

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 the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

38. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the 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 the 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 the 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 the Respondent and its officers, directors, employees, agents, successors and assigns.

41. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the 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:

Wayne Lee  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9523



For Respondent:

Mr. James S. Grauley, Manager  
Edgewood Townhomes, LP  
1718 Peachtree Street NW, Suite 684  
Atlanta, GA 30309  
404/874-5000

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.

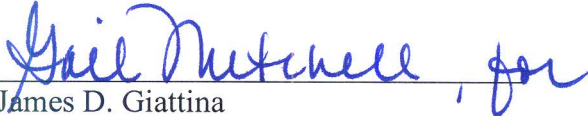
45. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

**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.

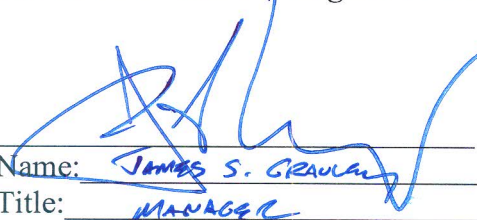
**AGREED AND CONSENTED TO:**

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
James D. Giattina  
Director  
Water Protection Division  
U.S. EPA, Region 4

Date: 5/15/13

**For RESPONDENT, Edgewood Townhomes, LP:**

  
Name: JAMES S. GRAULEY  
Title: MANAGER

Date: 3/05/2013

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

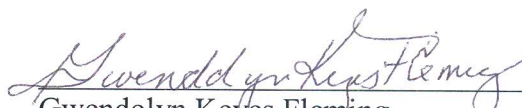
<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>EDGEWOOD TOWNHOMES, LP</b>	)	<b>FINAL ORDER</b>
<b>EDGEWOOD TOWNHOMES</b>	)	
<b>AT HUTCHINSON STREET</b>	)	
<b>ATLANTA, GEORGIA</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>DOCKET NO. CWA-04-2013-4502(b)</b>
<hr/>	)	

**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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/14/2013

  
Gwendolyn Keyes Fleming  
Regional Administrator



**CERTIFICATE OF SERVICE**

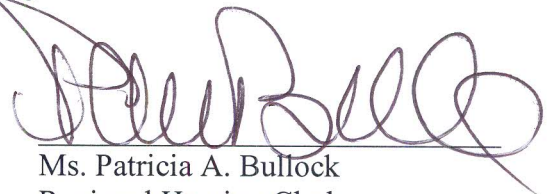
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Edgewood Townhomes, LP, **Docket No. CWA-04-2013-4502(b)** (filed with the Regional Hearing Clerk on MAY 28 2013 2013 was served on MAY 28 2013 2013, in the manner specified to each of the persons listed below.

By hand-delivery: Wayne Lee  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested: Mr. James S. Grauley, Manager  
Edgewood Townhomes, LP  
1718 Peachtree Street NW, Suite 684  
Atlanta, Georgia 30309

Linda MacGregor, Branch Chief  
Watershed Protection Branch  
Georgia Environmental Protection Division  
420 International Parkway, Suite 101  
Atlanta, Georgia 30354

Date: 5/28/13



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 4/11/13
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
SF Judicial Order/Consent Decree. FMS COLLECTS.
Other Receivables
This is an original debt.
This is a modification.

PAYEE: Edgewood Townhomes LP/Edgewood Townhomes at Hutchinson Street, Atlanta GA
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 40,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2013-4502 (b)

The Site-Specific Superfund (SF) Account Number:

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is:
If you have any questions call: in the Financial Management Section,
Telephone Number:

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, Environmental Enforcement Section, Department of Justice/RH 1647, P.O. BOX 7611, Benjamin Franklin Station, Washington, DC 20044
2. Originating Office (ORC)
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 sent to:
1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel



X   Full payment due within 30 days of the effective date of the CAFO.

       Installment payments to be paid:

Amount Due:

Date Due:

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

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