

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

**FILED**

**Sep 17, 2024**

**6:48 am**

**U.S. EPA REGION 4  
HEARING CLERK**

In the Matter of:

**Historic Charleston Apartments, LLC**

Docket No. **TSCA-04-2024-6117(b)**

Respondent.

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

5. Respondent is Historic Charleston Apartments, LLC, a limited liability company, doing business in the State of South Carolina. This proceeding pertains to Respondent's management of target housing located in the State of South Carolina.

### **III. GOVERNING LAW**

6. Pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, also known as Title X of the Housing and Community Development Act of 1992, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F (40 C.F.R. §§ 745.100-119) pertaining to the leasing of "target housing." Pursuant to Title X, it is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with a provision of Title X or any rule or order issued under Title X.
7. 40 C.F.R. Part 745, Subpart F imposes certain requirements on the lease of target housing. Generally, among other obligations under this Subpart, a lessor of target housing shall disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the lessee with a lead hazard information pamphlet; and attach specific disclosure and warning language to the leasing contract before the lessee is obligated under a contract to lease target housing.
8. The term "target housing" is defined at 40 C.F.R. § 745.103, to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.
9. The term "residential dwelling" is defined at 40 C.F.R. § 745.103, to mean a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
10. The term "lessor" is defined at 40 C.F.R. § 745.103, to mean any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
11. The term "lessee" is defined at 40 C.F.R. § 745.103, to mean any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
12. The term "agent" is defined at 40 C.F.R. § 745.103, to include any party who enters into a contract with a lessor, including any party who enters into a contract with a representative of the lessor, for the purpose of leasing target housing.
13. The term "owner" is defined at 40 C.F.R. § 745.103, to mean any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts,

government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

14. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, in the language of the contract (e.g., English, Spanish), a Lead Warning Statement with the following language: "Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."
15. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment or within the contract, in the language of the contract (e.g., English, Spanish), a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

#### **IV. FINDINGS OF FACT**

16. Respondent is, and was at all times relevant to this CAFO, a "lessor" and "agent" that offered contracts to lease "residential dwellings" that are "target housing," as those terms are defined at 40 C.F.R. § 745.103.
17. On November 6, 2023, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, an EPA inspector conducted an inspection at Respondent's place of business located at 96 ½ Rutledge Avenue, Charleston, South Carolina 29401, for the purpose of evaluating Respondent's compliance with the requirements of 40 C.F.R. Part 745, Subpart F.
18. At the time of the inspection, the EPA inspector requested copies of Respondent's records to determine its compliance with 40 C.F.R. Part 745, Subpart F. Respondent stated that it did not have such records available in the office but would submit records to the EPA after the inspection.
19. On November 16, 2023, Respondent submitted records to the EPA for review to determine its compliance with 40 C.F.R. Part 745, Subpart F.
20. Based on a review of Respondent's records, the EPA determined that Respondent had entered into contracts to lease the residential dwellings that are target housing (constructed before 1978) at the following locations on the specified dates listed below:
  - a. 164 A-2 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease

entered into on June 1, 2023;

- b. 164 A-3 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on June 1, 2023;
- c. 164 B-4 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on June 1, 2023;
- d. 164 C-3 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on June 1, 2023; and
- e. 164 B-3 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on May 31, 2023;
- f. 164 A-1 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on May 1, 2023;
- g. 164 C-1 Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on July 1, 2022; and
- h. 164 D Wentworth Street, Charleston, South Carolina 29401, built in 1853, lease entered into on February 15, 2021.

21. A review of the records provided by Respondent showed that prior to entering into the leases referenced in Paragraph 20, Respondent failed to:

- a. Include as an attachment or within the contract(s) to lease target housing the appropriate Lead Warning Statement, as required by 40 C.F.R. § 745.113(b)(1); and
- b. Include as an attachment or within the contract(s) to lease target housing a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(b)(2).

## **V. ALLEGED VIOLATIONS**

22. Based on the EPA's review of Respondent's records, the EPA has determined that prior to offering and entering into a contract for lease of residential dwellings of target housing, Respondent failed to:

- a. Include as an attachment or within the contract to lease target housing, the appropriate Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1); and
- b. Include as an attachment or within the contract to lease target housing a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, in violation of 40

C.F.R. § 745.113(b)(2).

## **VI. STIPULATIONS**

23. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

25. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart F, and the Act, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

f. agrees to comply with the terms of the CAFO.

26. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

## **VII. TERMS OF PAYMENT**

27. Respondent is assessed a civil penalty of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000)** which shall be paid within thirty (30) days after the Effective Date of this CAFO.

28. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the standard U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-standard mail delivery (e.g., FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, Missouri 63045

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: U.S. Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court

Riverdale, Maryland 20737  
Remittance Express (REX): 1-866-234-5681

29. Respondent shall send proof of payment via email, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
r4\_regional\_hearing\_clerk@epa.gov

and

Yvonne Lawson  
U.S. Environmental Protection Agency, Region 4  
lawson.yvonne@epa.gov

30. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2024-6117(b).

31. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
- b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R.

§ 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

32. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13 and 13.14);
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H);
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or
- d. refer the debt to the Department of Justice for litigation (*see* 40 C.F.R. § 13.33).

33. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

#### **VIII. EFFECT OF THE CAFO**

34. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

35. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

36. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

37. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent hazard as provided under the Act.

38. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

39. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers,



directors, employees, agents, trustees, authorized representatives, successors, and assigns.

40. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the company, or changes pertaining to its ownership and/or management of the residential dwellings identified in Paragraph 20 will not in any way alter Respondent's obligations and responsibilities under this CAFO.
41. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
42. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent, each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
43. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
44. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
45. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
46. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
47. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.


#### **IX. EFFECTIVE DATE**

48. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

**[Complainant and Respondent will Each Sign on Separate Pages]**

The foregoing Consent Agreement In the Matter of **Historic Charleston Apartments, LLC**, Docket No. **TSCA-04-2024-6117(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

<u></u>	<u>9-5-2024</u>
Signature	Date
Printed Name: <u>P. Cooper Coker IV</u>	
Title: <u>President</u>	
Address: <u>PO Box 176, Charleston, SC 29402</u>	

The foregoing Consent Agreement In the Matter of **Historic Charleston Apartments, LLC**, Docket No. **TSCA-04-2024-6117(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for

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Keriema S. Newman  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Historic Charleston Apartments, LLC**

Respondent.

Docket No. **TSCA-04-2024-6117(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," In the Matter of **Historic Charleston Apartments, LLC**, Docket No. **TSCA-04-2024-6117(b)**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all Parties at the following email addresses:**

**To Respondent:** Carrick C. Brooke-Davidson  
Partner  
Williams Mullen  
cdavidson@williamsmullen.com  
919-981-4027

Priestley Cooper Coker IV  
Authorized Manager  
Historic Charleston Apartments, LLC  
cooper.coker@gmail.com  
843-729-4593

**To EPA:** Yvonne Lawson  
Case Development Officer  
lawson.yvonne@epa.gov  
404-562-9205

Casey F. Bradford  
Attorney  
bradford.casey@epa.gov  
404-562-9656

Robert Caplan  
Senior Attorney  
caplan.robert@epa.gov  
404-562-9520

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r4\_regional\_hearing\_clerk@epa.gov