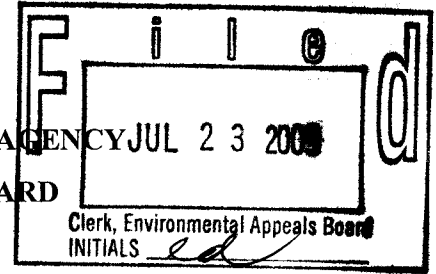


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ENVIRONMENTAL APPEALS BOARD
WASHINGTON, D.C.



In the Matter of:)
) Docket No. TSCA HQ-2009-5002
BRI OP LIMITED PARTNERSHIP) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent.)

The Complainant, by delegation from the Administrator of the U.S. Environmental Protection Agency ("EPA"), is the Director of the Waste and Chemical Enforcement Division, EPA Headquarters. The Respondent is BRI OP Limited Partnership, as further defined below, located at One Beacon St., Suite 1500, Boston, Massachusetts 02108, wishing to settle all matters pertaining to this case and having consented to the entry of this Consent Agreement and the attached proposed Final Order ("CAFO" or "Consent Agreement") prior to the filing of a civil administrative complaint in this matter have agreed to settle this administrative cause of action for the assessment of a civil penalty pursuant to section 16(a) of the *Toxic Substances Control Act* (TSCA), 15 U.S.C. § 2615(a), in accordance with 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.

Pursuant to 40 C.F.R. § 22.13(b) and § 22.18(b)(2), it is the intent of the Parties to simultaneously commence and conclude this proceeding by the issuance of this CAFO.

NOW, THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, and without any admission of violation of law or regulation by the Respondent, the Parties consent to the entry of, and agree to comply with the terms of this CAFO.

I. STATEMENT

1. BRI OP Limited Partnership (“Respondent” or “BRI OP”) is a former real estate management company that managed residential real estate properties.
2. On June 16, 2004, EPA Region 3 issued a request for information to Respondent with regard to the compliance at two properties pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, and its implementing regulations at 40 C.F.R. Part 745, Subpart F-Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (the “Act”)(collectively “LBP Disclosure Rules”). These properties included: 11200 Lockwood Drive, Silver Spring, Maryland 20901, in which legal interest had been transferred on April 30, 2003; and Westchester West Apartments, Incorporated at 3212 Hewitt Avenue, Silver Spring, Maryland 20906.
3. On August 5, 2004, August 23, 2004, May 13, 2005, BRI OP responded to EPA’s requests for information with regard to properties managed by Respondent as of August 5, 2004. On August 5, 2004, the Respondent managed the following residential properties older than 1978: Arbor Keys (Tampa, FL), Avalon on Abernathy (Atlanta, GA), Berkshire Crossing (Houston, TX), Chattahoochee Landing (Roswell, GA), Berkshires at Dunwoody (Atlanta, GA), Century Apartments (Cockeysville, MD), Channel Apartments (Glen Burnie, MD), Dorsey’s Forge Apartments (Columbia, MD), Hannibal Grove (Columbia, MD), Highlands at Briarcliff (Atlanta, GA), Seasons Apartments (Laurel, MD), Southpoint at Massapequa (Massapequa, NY), Westchester West Apartments (Silver Spring, MD), and Yorktown Apartments (Houston, TX) (collectively, the “Properties”). See Attachment A.

BRI OP sold Arbor Keys on November 30, 2004; Avalon on Abernathy on February 15, 2005; Berkshire Crossing on November 18, 2004; Berkshire at Dunwoody on August 20, 2004, and Highlands at Briarcliff on January 21, 2005; Southpoint at Massapequa on November 30, 2004; Yorktown Apartments on November 18, 2004 and Dorsey’s Forge on June 22, 2007.
4. Respondent notified EPA by letter, dated July 16, 2004, that BRI OP would perform voluntary environmental audits of its leasing files for the Properties in conformance with EPA’s

Incentives for Self-Policing Discovery, Disclosures, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (“Audit Policy”), effective May, 11, 2000.

5. On September 15, 2004 and October 29, 2004, BRI OP voluntarily submitted to EPA the compliance audit findings and/or other findings for the Properties.
6. Further, throughout 2004 - 2006, BRI OP voluntarily arranged to have certain Properties inspected for lead-based paint. As a result, four properties (Century Apartments, Channel Apartments, Chattahoochee Landing, and Dorsey’s Forge Apartments) were confirmed and certified by a licensed inspector to be lead-based paint free in accordance with 24 C.F.R. Part 35 and 40 C.F.R. Part 745. LBP conditions were identified at two other properties (Seasons Apartments and Westchester West). The lead-based paint conditions were remediated, and Lead-Based Paint Free certificates issued for Westchester West on June 22, 2006 and for Seasons Apartments on October 20, 2005. Respondent incurred costs of approximately \$1,193,900 to conduct and oversee the audits of leasing files, and to inspect and remediate lead-based paint conditions at these Properties.
7. The Respondent stipulates that EPA has jurisdiction over the subject matter of this CAFO.
8. The Respondent hereby waives any defenses it might have as to jurisdiction.
9. The Respondent neither admits nor denies the factual allegations or conclusions of law contained in this CAFO.
10. The Respondent hereby waives its right to a judicial or administrative review or hearing on any issue of law or fact set forth in this CAFO.
11. The Respondent waives its right to seek judicial review of the proposed Final Order.
12. Complainant and Respondent consent to the terms of this CAFO pursuant to 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.
13. Pursuant to 40 C.F.R. §§ 22.13 and 22.18, this CAFO simultaneously commences and concludes this proceeding.

II. EPA FINDINGS OF FACT AND LAW

14. All of the Properties were constructed before 1978.
15. The Properties are or were "target housing" as defined by 40 C.F.R. § 745.103.
16. In exchange for monetary consideration, BRI OP entered into contracts to lease with persons subsequently allowed to reside at the Properties.
17. These people are, hereinafter, referred to collectively as "BRI OP Lessees."
18. As a result of the contracts to lease, the Respondent became a "lessor," and each BRI OP Lessee became a "lessee" as those terms are defined by 40 C.F.R. § 745.103.
19. Pursuant to 40 C.F.R. § 745.107(a)(1) and 24 C.F.R. § 35.88(a)(1), before a lessee is obligated under a contract to lease target housing, the lessor must provide the lessee with a lead hazard information pamphlet.
20. Pursuant to 40 C.F.R. § 745.113(b)(1) and 24 C.F.R. § 35.92(b)(1), the lessor must include a lead warning statement as an attachment to or within the contract to lease target housing.
21. Pursuant to 40 C.F.R. § 745.113(b)(2) and 24 C.F.R. § 35.92(b)(2), the lessor must include a statement disclosing the presence of known Lead-Based Paint and/or Lead-Based Paint Hazards or a statement indicating no knowledge of the presence of Lead-Based Paint and/or Lead-Based Paint Hazards as an attachment to or within the contract to lease target housing.
22. Pursuant to 40 C.F.R. § 745.113(b)(3) and 24 C.F.R. § 35.92(b)(3) the lessor must include a list of any records or reports available to the lessor that pertain to lead hazard information or to indicate that no such list exists as an attachment to or within the contract to lease target housing.
23. Pursuant to 40 C.F.R. § 745.113 (b)(4) and 24 C.F.R. § 35.92(b)(4), the lessor must include a statement by the lessee affirming receipt of a statement disclosing the presence of Lead-Based Paint and/or Lead-Based Paint Hazards and a list of any records or reports available to the lessor pertaining to lead hazard information as an attachment to or within the contract to lease target housing.

24. Pursuant to 40 C.F.R. § 745.113 (b)(6) and 24 C.F.R. § 35.92(b)(6), the lessor must include the signatures of the lessors, agents and lessees, certifying the accuracy of the statements, to the best of their knowledge, as an attachment to or within the contract to lease target housing.

25. EPA alleges that BRI OP, as lessor, in violation of 40 C.F.R. § 745.113(b) and 24 C.F.R. § 35.92(b), failed to provide in one or more of its Properties, listed on attachment A, the following: a) an EPA-approved lead hazard information pamphlet to lessees; b) a lead warning statement as attachments to or within the contracts to lease units; c) statements disclosing the presence of Lead-Based Paint and/or Lead-Based Paint Hazards or indicating no knowledge of the presence of Lead-Based Paint and/or Lead-Based Paint Hazards as attachments to or within the contracts to lease units; d) lists of any records or reports available to BRI OP that pertain to lead hazard information, or statements that such records and reports do not exist as attachments to or within the contracts to lease units; e) statements by the lessees affirming the receipt of a statement disclosing the presence of Lead-Based Paint and/or Lead-Based Paint Hazards and a list of any records or reports available to BRI OP pertaining to lead hazard information as attachments to or within the contracts to lease units; and f) the signatures of BRI OP, as lessor, its agents and the lessees certifying the accuracy of their statements, as well as the dates, as attachments to or within the contracts to lease units.

26. For settlement purposes only, the Parties stipulate that a) BRI OP did not comply fully with provisions of the Act, and the implementing Disclosure Rule at six (6) Properties (Century Apartments, Chattahoochee Landing, Channel Apartments, Dorsey's Forge Apartments, Seasons Apartments, Westchester West), when it leased units located in one or more of the Properties; and b) BRI OP voluntarily conducted lease-file audits, lead-based paint inspections and/or remediation of lead-based paint conditions at six (6) Properties, which were certified by a licensed inspector to be lead-based paint free in accordance with 24 C.F.R. Part 35 and 40 C.F.R. Part 745.

III. PROPOSED SETTLEMENT PAYMENT

27. Section 16 of TSCA, Section 1018(b)(5) of the Act, and the *Civil Monetary Penalty Inflation Rule*, 40 C.F.R. Part 19, authorize the assessment of a civil penalty of up to \$11,000 for each violation of the Disclosure Rule. Pursuant to Section 16 of TSCA and the Act, the Complainant for settlement of this action, proposes to assess a final civil penalty in the amount of Two Hundred Twenty Thousand Dollars (\$220,000) against the Respondent, based on the alleged violations set forth above herein, and after consideration of the following statutory penalty factors: (i) the nature of the violation, (ii) the circumstances surrounding the violation, (iii) the extent of the violation, (iv) the gravity of the violation, (v) the Respondent's ability to pay, (vi) the Respondent's history of prior such violations, and (vii) such other matters as justice may require. This civil penalty is proposed in accordance with EPA's *Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act - Disclosure Rule Enforcement Response Policy* (February 2000)("ERP").

28. Pursuant to p. 16 of the ERP, EPA will adjust the proposed penalty downward 80% if the responsible party provides EPA with appropriate documentation (*e.g.*, reports for lead inspection conducted in accordance with HUD guidelines) that the target housing is certified to be lead-based paint free by a certified inspector.

29. Respondent has certified the Properties to be lead-based paint free thus, the proposed \$220,000 penalty is reduced by \$176,000 to \$44,000. In addition, based upon Respondent's cooperation in this matter, EPA agrees to reduce the \$220,000 by an additional 10% thus reducing the \$44,000 penalty an additional \$22,000 for a final penalty of \$22,000.

IV. TERMS OF SETTLEMENT

30. The Respondent consents to the execution of the CAFO and consents to the payment of a civil penalty in the amount of Twenty Two Thousand Dollars (\$22,000).

a. Not more than thirty (30) calendar days after the execution date of the Final Order by EPA's Environmental Appeals Board ("EAB"), Respondent shall either submit a cashier's or certified check with a notation of "BRI OP Limited Partnership, Civil Penalty Docket No. TSCA-

HQ-2009-5002,” payable to the order of the “Treasurer, United States of America,” in the amount of Twenty Two Thousand Dollars (\$22,000) to:

EPA-Washington
(Hearing Clerk)
Docket No. TSCA-HQ-2009-5002
P.O. Box 360277
Pittsburgh, PA 15251-6277

or pay Twenty Two Thousand Dollars (\$22,000) by wire transfer with a notation of “BRI OP Limited Partnership, Civil Penalty Docket No. TSCA-HQ-2009-5002” by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010099
The Bank Holding Acct:	Treas_NYC
The ABA Routing Number:	021030004

b. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Brian Dyer, Case Development Officer
U.S. Environmental Protection Agency (2249A)
Waste and Chemical Enforcement Division
1200 Pennsylvania Ave., NW
Washington, DC 20460

c. The Respondent understands that its failure to timely pay any portion of the civil penalty stated in this paragraph may result in the commencement of a civil action in federal district court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the U.S. Secretary of Treasury on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

31. This CAFO resolves the civil and administrative claims of the United States alleged in this CAFO. The effect of settlement described in this paragraph takes effect upon the completion of the Respondent’s obligations under this Consent Agreement, and is conditional upon the accuracy

and thoroughness of the Respondent's representations and certifications as memorialized in this Consent Agreement and the Respondent's letter(s) dated August 5, 2004, August 23, 2004 and May 13, 2005.

32. Unless otherwise expressly provided herein, terms used in the text of this CAFO have the same meaning as the Act, 42 U.S.C. §§ 4851b, d, the Disclosure Rule, and Section 402 of TSCA, 15 U.S.C. § 2681.

VI. OTHER MATTERS

33. The Complainant shall not be liable for any injuries or damages to persons or property resulting from any act or omission of the Respondent or any person carrying out any project or activity, including lead-based paint activities, under this CAFO. The Complainant shall not be held liable for any failure to act pursuant to any provision of this CAFO. The Complainant shall not be identified as a party to any contract entered into by the Respondent in carrying out the lead-based paint activities. In the event that liability might be placed upon the Complainant, the Respondent agrees to indemnify and hold harmless the Complainant from any and all causes of action due solely as a result of any act or omission of the Respondent or any agent of the Respondent in carrying out the lead-based paint activities under this CAFO.

34. This CAFO does not relieve the Respondent of the duty to comply with all applicable provisions of TSCA, the Act, or with any other federal, state, tribal, and local laws and regulations.

35. Neither the assessed penalty nor the money expended by the Respondent under this CAFO, may be claimed as tax deductible by the Respondent.

36. This CAFO shall be binding upon the Parties to this action, their officers, directors, employees, successors and assigns. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to it.

37. The Parties agree to bear their own costs in this matter.

38. The Respondent shall forward copies of all documents and notices required under this CAFO to the following person:

Brian Dyer, Case Development Officer
U.S. Environmental Protection Agency (2249A)
Waste and Chemical Enforcement Division
1200 Pennsylvania Avenue, NW
Washington, DC 20460

39. The Complainant shall forward all notices or other communications under this CAFO to the following persons:

BRI OP Limited Partnership
One Beacon Street, Suite 1500
Boston, MA 02108
Attention: General Counsel

Marian C. Hwang, Esquire
Miles & Stockbridge P.C.
10 Light Street
Baltimore, MD 21202

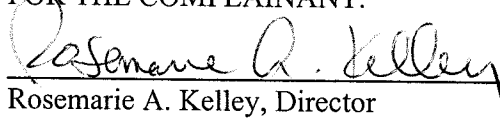
40. When executed by the EAB, the Final Order shall have the same force and effect as defined in 40 C.F.R. § 22.31. The Respondent shall remain responsible for the completion of all work required under this CAFO and the satisfaction of all of its terms.

41. This Consent Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied herein. The Parties acknowledge that there are no representations, agreements or other understandings relating to the settlement other than those expressly contained in this Consent Agreement.

42. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this Consent Agreement (or one or more of its terms and conditions) is held invalid, or

is not executed by all of the signatory Parties in identical form, or is not approved in such identical form by the EPA's EAB or its designated representative, then the entire Consent Agreement shall be null and void.

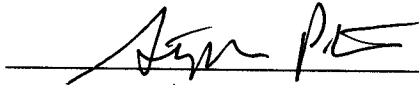
FOR THE COMPLAINANT:



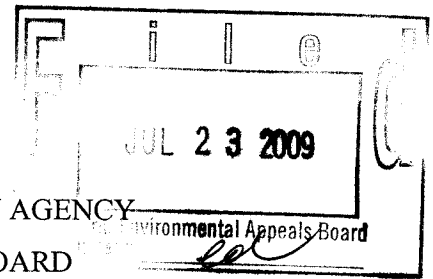
Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement

Date: 7/2/09

FOR THE RESPONDENT:



Date: 9/27/09



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ENVIRONMENTAL APPEALS BOARD

WASHINGTON, D.C.

In the Matter of:)
BRI OP LIMITED PARTNERSHIP) Docket No. TSCA HQ-2009-5002
) **FINAL ORDER**
Respondent.)

Pursuant to Section 16 of TSCA, 13 U.S.C. § 2615, it is hereby **ORDERED THAT:**

1. The Respondent shall comply with all of the terms of the Consent Agreement, incorporated herein, by reference;
2. The Respondent is assessed a civil penalty in the total sum of Twenty Two Thousand Dollars (\$22,000); and;
3. The Respondent shall, within thirty (30) calendar days of the execution of this Final Order, dispatch a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of Twenty Two Thousand Dollars (\$22,000). The check shall indicate that it is for "Docket No, TSCA HQ-2009-5002" and shall be mailed to the following:

U.S. Environmental Protection Agency
Headquarters Hearing Clerk
P.O. Lockbox 360277
Pittsburgh, PA 15251-6277

or make payment through a wire transfer as described in the Consent Agreement.

4. This order shall be in effect forthwith.

IT IS SO ORDERED.

Date: 7/23/09

ENVIRONMENTAL APPEALS BOARD
By: [Signature]
Environmental Appeals Judge
U.S. Environmental Protection Agency

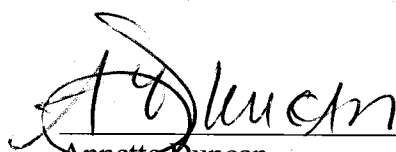
CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order," *BRI OP Limited Partnership*, Docket No. TSCA-HQ-2009-5002, was filed and copies of the same were mailed to the parties as indicated below:

Dean Ziegel, Esq.
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Washington, D.C. 20460

BRI OP Limited Partnership
One Beacon Street, Suite 1500
Boston, MA 02108
Attention: General Counsel

Marian C. Hwang, Esq.
Miles & Stockbridge P.C.
10 Light Street
Baltimore, MD 21202



Annette Duncan

Secretary
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dated: JUL 23 2009

Attachment A

Properties older than 1978:

CENTURY APTS.

307 Fox Fire Place
Cockeysville, MD 21030

THE CHANNEL

6533 Cedar Furnace Circle
Glen Burnie, MD 21061

DORSEY'S FORGE APTS.

9650 #4 White Acre Road
Columbia, MD 21045

HANNIBAL GROVE APTS.

5361 #4 Brookway
Columbia, MD 21044

HARPER'S MILL

600 Harpers Mill Road
Millersville, MD 21108

THE SEASONS APTS.

9220 Old Lantern Way
Laurel, MD 20723

SOUTHPOINT AT MASSAPEQUA APTS.

25 Weaver Drive
Massapequa, NY 11758

WESTCHESTER WEST APARTMENTS

3212 Hewitt Avenue
Silver Spring, MD 20906

THE AVALON ON ABERNATHY

550 Abernathy Road, N.E.
Atlanta, GA 30328

BERKSHIRES AT DUNWOODY

501 North River Parkway
Atlanta, GA 30350

CHATTAHOOCHEE LANDING

100 Chattahoochee Circle
Roswell, GA 30075

HIGHLANDS AT BRIARCLIFF

2735 Briarcliff Road
Atlanta, GA 30329

Attachment A

ARBOR KEYS APARTMENTS

4501 Treehouse Lane
Tamarac, FL 33319

BERKSHIRE CROSSING APTS.

7600 Kirby
Houston, TX 77030

BERKSHIRE SPRINGS APARTMENTS

5704 Spring Valley Road
Dallas, TX 75240

YORKTOWN APTS.

2530 Yorktown
Houston, TX 77056