

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

FILED

Aug 19, 2024

10:47 am

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

In the Matter of:

FYVE South Carolina, LLC d/b/a FYVE Realty

Respondent.

Docket No. **TSCA-04-2024-6111(b)**

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* (Consolidated Rules), 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 FYVE South Carolina, LLC d/b/a FYVE Realty, a limited liability company doing business in the State of South Carolina. This proceeding pertains to Respondent's management and renovation of target housing located in the State of South Carolina.

III. GOVERNING LAW

A. Requirements Pertaining to Leasing of Target Housing

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 mean 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. The term “lead-based paint free housing” is defined at 40 C.F.R. § 745.103, to mean target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.
15. Pursuant to 40 C.F.R. § 745.107(a), before the lessee is obligated under any contract to lease target housing that is not otherwise an exempt transaction pursuant to 40 C.F.R. § 745.101, lessors shall complete the activities set forth in 40 C.F.R. § 745.107(a)(1)-(4).
16. Pursuant to 40 C.F.R. § 745.107(a)(1), the lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled “Protect Your Family From Lead in Your Home” (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by the EPA.
17. Pursuant to 40 C.F.R. § 745.107(a)(2), the lessor shall disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. 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.
18. Pursuant to 40 C.F.R. § 745.107(a)(3), the lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased and the existence of any available records or reports pertaining to 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.
19. Pursuant to 40 C.F.R. § 745.107(a)(4), the lessor shall provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.
20. 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.”
21. 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.

22. Pursuant to 40 C.F.R. § 745.113(b)(3), 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 list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.
23. Pursuant to 40 C.F.R. § 745.113(b)(4), 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 lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of 40 C.F.R. § 745.113 and the lead hazard information pamphlet required under 15 U.S.C. § 2686.
24. Pursuant to 40 C.F.R. § 745.113(b)(5), 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): when one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that: the agent has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d; and the agent is aware of his/her duty to ensure compliance with the requirements of Subpart F of 40 C.F.R. Part 745.
25. Pursuant to 40 C.F.R. § 745.113(c)(1), the lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of 40 C.F.R. § 745.113 for no less than three years from the commencement of the leasing period.

B. Requirements Pertaining to Repair, Renovation, and Painting of Target Housing

26. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, the EPA Administrator promulgated the "Residential Property Renovation Rules" at 40 C.F.R. Part 745, Subpart E, including the Pre-Renovation Education Rule; Renovation, Repair, and Painting Rule, and the Lead-Based Paint Activities Rule. 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 any of the rules issued under 40 C.F.R. Part 745, Subpart E.
27. In accordance with 40 C.F.R. § 745.83, the definition of "target housing" found in the definitions set forth in 40 C.F.R. § 745.103, and restated in Paragraph 8 above, applies to the regulations in 40 C.F.R. Part 745, Subpart E.

28. The term “child-occupied facility” is defined at 40 C.F.R. § 745.83, to mean, in part, a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours.
29. The term “renovation” is defined at 40 C.F.R. § 745.83, to mean, in part, the modification of any existing structure or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an “abatement” as defined at 40 C.F.R. § 745.223. The term renovation includes but is not limited to the following: the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); and the removal of building components (e.g., walls, ceilings, plumbing, windows).
30. The term “firm” is defined at 40 C.F.R. § 745.83, to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association or other business entity; a Federal, State, Tribal, or local government; or a nonprofit organization.
31. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without having obtained certification from the EPA under 40 C.F.R. § 745.89(a)(1), which requires firms that perform renovations for compensation to apply to the EPA for certification to perform renovations.
32. Persons who violate 40 C.F.R. Part 745, Subpart E or Subpart F, are subject to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

IV. FINDINGS OF FACTS

33. 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, and a “firm” that performs “renovations” for compensation as those terms are defined at 40 C.F.R. § 745.83.
34. On November 7, 2023, an inspector with the EPA conducted an inspection at Respondent’s place of business located at 3300 W. Montague Avenue, Suite 227, N. Charleston, South Carolina 29418, for the purpose of evaluating Respondent’s compliance with the requirements of 40 C.F.R. Part 745, Subparts E and F.
35. At the time of the inspection, the EPA requested copies of Respondent’s records to determine its compliance with 40 C.F.R. Part 745, Subparts E and F. Respondent stated that it did not have records available in the office but would submit records to the EPA after the inspection.
36. On November 16, 2023, December 5, 2023, March 13, 2024, and March 15, 2024, Respondent submitted records to the EPA for review to determine its compliance with 40 C.F.R. Part 745, Subparts E and F.

37. 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. 5902 Park Street, Hanahan, South Carolina 29410, built in 1950, lease entered into on December 1, 2022; and
 - b. 2657 Oregon Avenue, N Charleston, South Carolina 29405, built in 1943, lease entered into on November 23, 2021.
38. A review of the records provided by Respondent failed to demonstrate that prior to entering into the leases referenced in Paragraph 37, Respondent had:
 - a. Included 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);
 - b. Included 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);
 - c. Included as an attachment or within the contract(s) to lease target housing, a statement by the lessee affirming receipt of the information required under 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.113(b)(3), and the lead hazard pamphlet required under 15 U.S.C. § 2686, in accordance with 40 C.F.R. § 745.113(b)(4); and
 - d. Included as an attachment or within the contracts to lease target housing a statement by the agent involved in the transaction to lease target housing that the agent has informed the lessor of the lessor's obligations, and that the agent is aware of his duty to ensure compliance, as required by 40 C.F.R. § 745.113(b)(5).
39. On March 15, 2024, the EPA received information that renovation work had been conducted at a private residence located at 5902 Park Street, Hanahan, South Carolina 29410 (hereinafter "the Property"), where Respondent conducted "renovations," as defined at 40 C.F.R. § 745.83, for compensation on or about November 15, 2023.
40. The Property was constructed before 1978 and is "target housing" as defined at 40 C.F.R. § 745.103.
41. At the time that the renovation work was being performed, Respondent had not obtained "firm certification" to perform renovations for compensation as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

V. ALLEGED VIOLATIONS

42. Based on the EPA's review of the records submitted by Respondent subsequent to the November 7, 2023 inspection, the EPA alleges that Respondent, acting in its capacity as a lessor

and an agent concerning the leasing of the target housing described in Paragraph 37, 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);
 - 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);
 - c. Include as an attachment or within the contract to lease target housing, a statement by the lessee affirming receipt of the information required under 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.113(b)(3), and the lead hazard pamphlet required under 15 U.S.C. 2686, in violation of 40 C.F.R. § 745.113(b)(4); and
 - d. Include as an attachment or within the contract to lease target housing a statement by the agent involved in the transaction to lease target housing that the agent had informed the lessor of the lessor's obligations, and that the agent was aware of his duty to ensure compliance, in violation of 40 C.F.R. § 745.113(b)(5).
43. Based on the EPA's review of the records submitted by Respondent subsequent to the November 7, 2023 inspection, the EPA alleges that at the time Respondent was performing the renovation of the Property as set forth in Paragraph 39, Respondent had not obtained firm certification to perform renovations for compensation, in violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

VI. STIPULATIONS

44. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
45. 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.

46. 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, Subparts E and 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.
47. 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

48. Respondent is assessed a civil penalty of **SIX THOUSAND, FOUR HUNDRED DOLLARS (\$6,400)**. Based on Respondent's written certification to the EPA that payment of the entire penalty within thirty (30) days of the Effective Date of this CAFO would result in financial hardship, the EPA has agreed that the civil penalty may be paid in six (6) installments in order to complete payment of the assessed civil penalty including interest. Any false statement made by Respondent in the certified statement may result in the voiding of the payment plan and a requirement that Respondent pay the entire penalty upon notification from the EPA, or in the revocation of this CAFO pursuant to Paragraph 68 of this CAFO.

Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be **\$6,474.88**. The first payment is due within thirty (30) days of the Effective Date of this CAFO, which is upon its filing with the Regional Hearing Clerk. Respondent's subsequent payments shall thereafter be due in **thirty (30)-day** intervals from said Effective Date.

Respondent shall make payments in accordance with the following schedule:

Payment Number	Payment shall be made <i>no later than</i>	Principal Amount	Interest Amount	Total Payment Amount
1	Thirty (30) days following the Effective Date of this CAFO	U.S. \$1,057.81	U.S. \$21.33	U.S. \$1,079.14
2	Sixty (60) days following the Effective Date of this CAFO	U.S. \$1,061.34	U.S. \$ 17.81	U.S. \$1,079.15
3	Ninety (90) days following the Effective Date of this CAFO	U.S. \$1,064.88	U.S. \$14.27	U.S. \$1,079.15
4	One hundred twenty (120) days following the Effective Date of this CAFO	U.S. \$1,068.43	U.S. \$10.72	U.S. \$1,079.15
5	One hundred fifty (150) (150) days following the Effective Date of this CAFO	U.S. \$1,071.99	U.S. \$7.16	U.S. \$1,079.15
6	One hundred eighty (180) days following the Effective Date of this CAFO	U.S. \$1,075.55	U.S. \$3.59	U.S. \$1,079.14

- a. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable to pay a non-payment penalty and other charges as described below in Paragraph 52 in the event of any such failure or default.
- b. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may take action as set forth below in Paragraph 53.
- c. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of \$6,400 within thirty (30) days of the Effective Date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

49. 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 Respondent and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by standard U.S. Postal Service delivery, 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: 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 US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Remittance Express (REX): 1-866-234-5681

50. 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

51. “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 Respondent name and Docket No. TSCA-04-2024-6111(b).
52. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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.
53. 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 as provided in 40 C.F.R. § 13.33.

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

VIII. EFFECT OF THE CAFO

- 55. 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.
- 56. Pursuant to 40 C.F.R. § 22.18(c), 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.
- 57. 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.
- 58. 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.
- 59. 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.
- 60. 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.
- 61. 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 37, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
- 62. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Property, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

63. 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.
64. 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.
65. 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.
66. 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.
67. 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.
68. 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.
69. 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

70. 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.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement, In the Matter of **FYVE South Carolina, LLC d/b/a FYVE Realty**, Docket No. **TSCA-04-2024-6111(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Albert Spell

07/30/2024

Signature

Date

Printed Name: Albert Spell

Title: President / CEO

Address: 3300 W Montague Ave #205 North Charleston, SC 29418

The foregoing Consent Agreement, In the Matter of **FYVE South Carolina, LLC d/b/a FYVE Realty**, Docket No. **TSCA-04-2024-6111(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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:

FYVE South Carolina, LLC d/b/a FYVE Realty

Respondent.

Docket No. **TSCA-04-2024-6111(b)**

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.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," In the Matter of **FYVE South Carolina, LLC d/b/a FYVE Realty**, Docket No. **TSCA-04-2024-6111(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: Albert Spell, Chief Operations Officer
FYVE South Carolina, LLC d/b/a FYVE Realty
albert@fyve.com
844-548-3983, ext. 1003

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

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

Shannon L. Richardson
Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov