

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)
)
Pacific Coast Capital Investors, LLC)
dba North Aspen Apartments)
1722 West 400 North)
Salt Lake City, UT 84116)
)
)
Respondent.)
)
)
)

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. TSCA-08-2025-0001

I. INTRODUCTION

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 Supervisor of the Toxics and Pesticides Enforcement Section in the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 8, 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 Pacific Coast Capital Investors, LLC, a limited liability company doing business as North Aspen Apartments, doing business in the State of Utah. This proceeding pertains to target housing managed by Respondent in the State of Utah.

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 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.

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 EPA.

17. 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."

18. 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 hazards.

19. 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.

20. 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.

21. 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 that the agent is aware of his/her duty to ensure compliance with the requirements of Subpart F of 40 C.F.R. Part 745.

22. Pursuant to 40 C.F.R. § 745.113(b)(6), 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): the signatures of the lessors, agents, and lessees, certifying to the best of their knowledge, the accuracy of the statements referenced in 40 C.F.R. §§ 745.113(b)(1), (b)(2), (b)(4), and (b)(5), along with the dates of signature.

23. Persons who violate 40 C.F.R. Part 745 are subject to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and the inflationary adjustments to those civil penalties at 40 C.F.R. Part 19.

IV. FINDINGS OF FACTS

24. Respondent is, and was at all times relevant to this CAFO, a “lessor” that offered contracts to lease “residential dwellings” that are “target housing” as those terms are defined at 40 C.F.R. § 745.103.

25. The Salt Lake County Assessor’s online records for the subject “residential dwellings,” which are part of the North Aspen Apartments, located at 1722 W. 400 N. Salt Lake City, Utah (parcel #083417702900000) reflect “1972” as the “Year Built” and “1987” as the “Effective Year Built.” https://slco.org/assessor/new/javaapi2/parcelviewext.cfm?parcel_ID=&query=Y.)

26. On or about June 8, 2023, an inspector with the EPA contacted Respondent to schedule an inspection at Respondent’s place of business located at 1722 W 400 N, Salt Lake City, Utah, for the purpose of evaluating Respondent’s compliance with the requirements of 40 C.F.R. Part 745, Subpart F.

27. On June 28, 2023, Respondent submitted records to the EPA for review to determine its compliance with 40 C.F.R. Part 745, Subpart F.

28. Based on a review of Respondent’s records to determine Respondent’s compliance with 40 C.F.R. Part 745, Subpart F, the EPA determined that Respondent entered into contracts to lease the residential dwellings that are target housing (the Properties) at the following locations, on the specified dates listed below:

- a. 1722 W 400 N #6, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on April 6, 2023;
- b. 1722 W 400 N #7, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on December 31, 2022;
- c. 1722 W 400 N #12, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on May 27, 2023;
- d. 1722 W 400 N #14, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on March 28, 2023;
- e. 1722 W 400 N #36, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on March 29, 2023;
- f. 1722 W 400 N #37, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on March 27, 2023;

- g. 1722 W 400 N #40, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on February 28, 2023; and
- h. 1722 W 400 N #41, Salt Lake City, Utah 84116, Year Built – 1972, lease entered on May 1, 2023.

29. The records submitted by Respondent failed to document that prior to entering the leases referenced in Paragraph 28, Respondent had:

- a. Provided the lessees with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1);
- b. Included as an attachment or within the contracts to lease target housing the appropriate Lead Warning Statement as required by 40 C.F.R. § 745.113(b)(1); and
- c. Included as an attachment or within the contracts 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.

V. ALLEGED VIOLATIONS

30. Based on the EPA's review of Respondent's records as described in Section IV above, the EPA alleges that prior to offering and entering into contracts for lease of the residential dwellings of target housing listed in Paragraph 28, Respondent failed to:

- a. Provide the lessees with an EPA-approved lead hazard information pamphlet in violation of 40 C.F.R. § 745.107(a)(1);
- b. Include as an attachment or within the contracts to lease target housing the appropriate Lead Warning Statement in violation of 40 C.F.R. § 745.113(b)(1); and
- c. Include as an attachment or within the contracts 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

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

32. 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, but consents to the assessment of a civil penalty, as stated below, to avoid any further legal defense expenses and other cost associated with prolonged litigation;
- c. consents to the conditions specified in this CAFO;
- d. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO;
- e. waives its rights to appeal the Final Order accompanying this CAFO;
- f. waives any rights or defenses that it has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

33. 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 and the Act, and that all violations alleged herein, which are neither admitted nor denied, have been corrected; and
- e. agrees to comply with the terms of the CAFO.

34. The parties consent to service of the Final Order electronically by email at the following addresses: weiner.marc@epa.gov (For Complainant) and mbanks@parrbrown.com and apeceimer@cbcburlingame.com (For Respondent).

VII. PENALTY AND TERMS OF PAYMENT

35. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of seventy-four thousand and eighty-two dollars (\$74,082) within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
 - c. identify the payment with the docket number that appears on the Final Order,
 - d. within 24 hours of payment, email proof of payment to Britta Copt at copt.britta@epa.gov and Marc Weiner at weiner.marc@epa.gov, (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 payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
36. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States’ enforcement expenses;
 - b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. 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, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents’ licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
37. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

38. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (entitled “Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid to come “into compliance with a law.” The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, the EPA requires, and Respondent agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify on its completed IRS Form W-9 that this form includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Chalifoux.Jessica@epa.gov, no later than 30 days after the due date under paragraph 35, above, for payment of the penalty, and EPA recommends encrypting IRS Form W9 in email correspondence; and
- d. If Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five days after Respondent’s receipt of a TIN issued by the IRS.

VIII. EFFECT OF THE CAFO

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

40. 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).

41. 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.

42. 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.

43. 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.

44. 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.

45. 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 Properties identified in Paragraph 28, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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

53. 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.

The foregoing Consent Agreement, In the Matter of Pacific Coast Capital Investors, LLC, dba North Aspen Apartments, is Hereby Stipulated, Agreed, and Approved for Entry.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

Date: _____

By: _____

David Cobb, Supervisor
Toxics and Pesticides Enforcement Section,
Air and Toxics Branch, Enforcement and Compliance Assurance
Division

**Pacific Coast Capital Investors, LLC dba North Aspen Apartments,
Respondent.**

Date: 11/12/24

By: _____

Name: ANDREW PECEIMER

Title: PRESIDENT

Address: 1575 BAYSHORE HWY #100
BURLINGAME CA 94010