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7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. TSCA-09-2019- 0010
11)
12 CBIP, Inc., d.b.a. Coldwell Banker Island)
Properties,)
13)
14 Respondent.)

15
16 I. CONSENT AGREEMENT

17 The United States Environmental Protection Agency, Region IX (“EPA”), and CBIP, Inc.,
18 d.b.a. Coldwell Banker Island Properties (the “Respondent”) agree to settle this matter and
19 consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO
20 simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b)
21 and 22.18(b).

22 A. AUTHORITY AND PARTIES

23 1. This is a civil administrative penalty action instituted against Respondent pursuant to
24 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
25 of Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992
26 (“Section 1018”), 42 U.S.C. § 4852d, and federal regulations promulgated to implement Section
27 1018 at 40 C.F.R. Part 745, Subpart F. Violation of Section 1018 through its implementing
28 regulations at 40 C.F.R. Part 745, Subpart F constitutes violation of Section 409 of TSCA, 15
U.S.C. § 2689.

1 2. Complainant is the Chief of the Waste and Chemical Section in the Air, Waste, and
2 Toxics Branch of the Enforcement Division in EPA Region IX, who has been duly delegated the
3 authority to bring this action and to sign a consent agreement settling this action.

4 3. Respondent sells residential properties located on the Hawaiian island of Maui.

5 B. STATUTORY AND REGULATORY BASIS

6 4. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose
7 certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards
8 upon the sale or lease of target housing.

9 5. "Target housing" means any housing constructed prior to 1978, except housing for the
10 elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is
11 expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

12 6. "Seller" means any entity that transfers legal title to target housing, in whole or in part,
13 in return for consideration, including but not limited to individuals, partnerships, corporations,
14 trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40
15 C.F.R. § 745.103.

16 7. "Purchaser" means any entity that enters into an agreement to purchase an interest in
17 target housing, including but not limited to individuals, partnerships, corporations, trusts,
18 government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. §
19 745.103.

20 8. "Agent" means any party who enters into a contract with a seller or lessor, including
21 any party who enters into a contract with a representative of the seller or lessor, for the purpose
22 of selling or leasing target housing. 40 C.F.R. § 745.103.

23 9. Each contract to sell target housing shall include, as an attachment, a Lead Warning
24 Statement containing language provided in 40 C.F.R. § 745.113(a)(1). 40 C.F.R. §
25 745.113(a)(1).

26 10. Each contract to sell target housing shall include, as an attachment, a statement by the
27 seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the
28

1 target housing being sold or indicating no knowledge of the presence of lead-based paint and/or
2 lead-based paint hazards. 40 C.F.R. § 745.113(a)(2).

3 11. Each contract to sell target housing shall include, as an attachment, a list of any
4 records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint
5 hazards in the unit that have been provided to the purchaser or an indication that no such records
6 or reports are available. 40 C.F.R. § 745.113(a)(3).

7 12. Each contract to sell target housing shall include, as an attachment, a statement by the
8 purchaser affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(a)(2) and (3) and
9 the lead hazard information pamphlet required under 15 U.S.C. § 2696. 40 C.F.R. §
10 745.113(a)(4).

11 13. Each contract to sell target housing shall include, as an attachment, a statement by the
12 purchaser that he/she has either received the opportunity to conduct the risk assessment or
13 inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity. 40 C.F.R. §
14 745.113(a)(5).

15 14. When one or more agents are involved in the transaction to sell target housing on
16 behalf of the seller, each contract to sell target housing shall include, as an attachment, a
17 statement that the agent has informed the seller of the seller's obligations under Section 1018 and
18 the agent is aware of his/her duties to ensure compliance with the requirements of 40 C.F.R. Part
19 745, Subpart F. 40 C.F.R. § 745.113(a)(6).

20 15. Each contract to sell target housing shall include, as an attachment, the signatures of
21 the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their
22 knowledge, along with the dates of signature. 40 C.F.R. § 745.113(a)(7).

23 16. As provided at 40 C.F.R. § 745.118(e), failure to comply with 40 C.F.R. § 745.113 is
24 a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each such violation
25 shall not be more than \$16,000 for violations occurring on or before November 2, 2015 and
26 \$17,395 for violations occurring after November 2, 2015 pursuant to the Civil Monetary Penalty
27 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
28 Inflation Adjustment Acts of 1990 and 2015, Pub. L. 101-410.

1 C. ALLEGED VIOLATIONS

2 17. EPA has jurisdiction over this matter pursuant to Section 1018.

3 18. At all times relevant to this matter, Respondent was a “seller” of and “agent” for the
4 three residential properties located at 7791 Kula Highway in Kula, Hawaii (the “Kula Property”),
5 261 Awalau Road in Haiu, Hawaii (the “Haiku Property”), and 267 Baldwin Avenue in Paia,
6 Hawaii (the “Paia Property”), as those terms are defined at 40 C.F.R. § 745.103.

7 19. At all times relevant to this matter, the residential properties referenced in Paragraph
8 18 were “target housing,” as that term is defined at 40 C.F.R. § 745.103.

9 20. On or around February 24, 2015, November 2, 2015, and November 6, 2015,
10 Respondent entered into sales contracts for the Kula Property, the Haiku Property, and the Paia
11 Property, respectively.

12 21. At the time that Respondent entered into the sales contracts for the Kula and Paia
13 Properties, Respondent failed to include in the contracts, as an attachment, a Lead Warning
14 Statement containing language provided in 40 C.F.R. § 745.113(a)(1), as required by 40 C.F.R. §
15 745.113(a)(1).

16 22. At the time that Respondent entered into the sales contract for the Paia Property,
17 Respondent failed to include in the contract, as an attachment, a statement by Respondent
18 disclosing the presence of known lead-based paint and/or lead-based paint hazards in the
19 property being sold or indicating no knowledge of the presence of lead-based paint and/or lead-
20 based paint hazards, as required by 40 C.F.R. § 745.113(a)(2).

21 23. At the time that Respondent entered into the sales contracts for the Kula, Haiku and
22 Paia Properties, Respondent failed to include in the contracts, as an attachment, a list of any
23 records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint
24 hazards in the properties that have been provided to the purchaser or an indication that no such
25 records or reports are available, as required by 40 C.F.R. § 745.113(a)(3).

26 24. At the time that Respondent entered into the sales contracts for the Kula and Paia
27 Properties, Respondent failed to include in the contracts, as an attachment, a statement by the
28 purchaser affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(a)(2) and (3) and

1 the lead hazard information pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R.
2 § 745.113(a)(4).

3 25. At the time that Respondent entered into the sales contracts for the Kula, Haiku, and
4 Paia Properties, Respondent failed to include in the contracts, as an attachment, a statement by
5 the purchaser that he/she has either received the opportunity to conduct the risk assessment or
6 inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity, as required by 40
7 C.F.R. § 745.113(a)(5).

8 26. At the time that Respondent entered into the sales contracts for the Kula and Paia
9 Properties, Respondent failed to include in the contracts, as an attachment, a statement that the
10 agent has informed the seller of the seller's obligations under Section 1018 and the agent is
11 aware of his/her duties to ensure compliance with the requirements of 40 C.F.R. Part 745,
12 Subpart F, as required by 40 C.F.R. § 745.113(a)(6).

13 27. At the time that Respondent entered into the sales contracts for the Kula and Paia
14 Properties, Respondent failed to include in the contracts, as an attachment, the signatures of the
15 sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their
16 knowledge, along with the dates of signature, as required by 40 C.F.R. § 745.113(a)(7).

17 28. Each of Respondent's failures to comply with 40 C.F.R. § 745.113, as set forth in
18 Paragraphs 21 through 27, constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. §
19 2689, which can be assessed a penalty of up to \$16,000 per violation occurring on or before
20 November 2, 2015 and \$17,395 per violation occurring after November 2, 2015.

21 **D. RESPONDENT'S ADMISSIONS**

22 29. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
23 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
24 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
25 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
26 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
27 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
28 proposed Final Order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 30. In settlement of the violations specifically alleged in Section I.C of this CAFO,
3 Respondent shall pay a civil administrative penalty of NINETEEN THOUSAND, THREE
4 HUNDRED, AND FORTY-FOUR DOLLARS (\$19,344). Respondent shall pay this civil
5 penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid
6 by remitting a certified or cashier's check, including the name and docket number of this case,
7 for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
8 methods listed below) and sent as follows:

9 Regular Mail:

10 U.S. Environmental Protection Agency
11 Fines and Penalties
12 Cincinnati Finance Center
13 PO Box 979077
14 St. Louis, MO 63197-9000

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New
17 York City with the following information:
18 Federal Reserve Bank of New York
19 ABA = 021030004
20 Account = 68010727
21 SWIFT address = FRNYUS33
22 33 Liberty Street
23 New York, NY 10045
24 Field Tag 4200 of the Fedwire message should read "D 68010727
25 Environmental Protection Agency"

26 Overnight Mail:

27 U.S. Bank
28 1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, DC 20074 ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov

1 Enter "sfo1.1" in the search field
2 Open form and complete required fields

3 If clarification regarding a particular method of payment remittance is
4 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

5 A copy of each check, or notification that the payment has been made by one of the other
6 methods listed above, including proof of the date payment was made, shall be sent with a
7 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
8 following addresses:

9 Regional Hearing Clerk
10 Office of Regional Counsel (ORC-1)
11 U.S. Environmental Protection Agency, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 Max Weintraub
15 Waste and Chemical Section
16 Enforcement Division (ENF-2-2)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105

20 31. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
21 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
22 use such payment as a tax deduction.

23 32. If Respondent fails to pay the assessed civil administrative penalty of NINETEEN
24 THOUSAND, THREE HUNDRED, AND FORTY-FOUR DOLLARS (\$19,344), as identified in
25 Paragraph 30, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated
26 penalty to EPA of \$500 per day in addition to the assessed penalty. Stipulated penalties shall
27 accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and
28 shall become due and payable upon EPA's written request. Failure to pay the civil administrative
penalty specified in Paragraph 30 by the deadline specified in that Paragraph may also lead to any
or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection
agency, or to the Department of Justice for filing of a collection action in the appropriate United

1 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
2 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
3 collection proceeding.

4 (2) The U.S. Government may collect the debt by administrative offset
5 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
6 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
7 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
8 C.F.R. §§ 13(C) and 13(H).

9 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
10 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
11 business with EPA or engaging in programs EPA sponsors or funds.

12 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
13 Government may assess interest, administrative handling charges, and nonpayment penalties
14 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
15 civil administrative penalty specified in Paragraph 30 by the deadline specified in that Paragraph.

16 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
17 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
18 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
19 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
20 (30) days of the effective date of this CAFO.

21 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
22 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
23 based on either actual or average cost incurred (including both direct and indirect costs), for
24 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

25 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
26 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
27 may be assessed on all debts more than ninety (90) days delinquent.

1 F. CERTIFICATION OF COMPLIANCE

2 33. In executing this CAFO, Respondent certifies that it is now fully in compliance with
3 Section 1018 and federal regulations promulgated to implement Section 1018 at 40 C.F.R. Part
4 745, Subpart F.

5 G. RETENTION OF RIGHTS

6 34. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
7 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
8 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
9 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
10 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
11 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
12 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
13 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

14 35. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
15 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
16 and permits.

17 H. ATTORNEYS' FEES AND COSTS

18 36. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
19 this proceeding.

20 I. EFFECTIVE DATE

21 37. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
22 effective on the date that the Final Order contained in this CAFO, having been approved and
23 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

24 J. BINDING EFFECT

25 38. The undersigned representative of Complainant and the undersigned representative of
26 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
27 of this CAFO and to bind the party he or she represents to this CAFO.

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

1 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
2 and assigns.

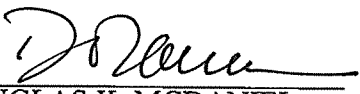
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4
5 FOR RESPONDENT CBIP, INC., d.b.a. COLDWELL BANKER ISLAND
6 PROPERTIES:

7 11-6-18
8 DATE

9 
10 BOB LIGHTBOURN
11 General Manager
12 Coldwell Banker Island Properties

13 FOR COMPLAINANT EPA:

14 11/26/18
15 DATE


16 
17 DOUGLAS K. MCDANIEL
18 Chief, Waste and Chemical Section
19 Enforcement Division
20 U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Coldwell Banker Island Properties having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-0016) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of NINETEEN
6 THOUSAND, THREE HUNDRED, AND FORTY-FOUR DOLLARS (\$19,344), and comply
7 with the terms and conditions set forth in the Consent Agreement.

8
9
10 11/29/18
11 DATE

12 
13 STEVEN JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order in the matter of CBIP, Inc. [Docket Number: TSCA-09-2019-0010] has been filed by the Regional Hearing Clerk, and was served on the following parties as indicated below:

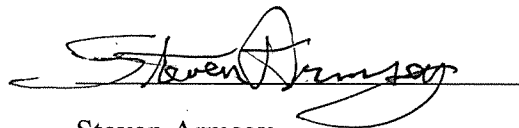
Certified Mail: 7016 1970 0000 9792 1582

Respondent(s): R. Clay Sutherland
CBIP, Inc.
173 Hooohana Street, Suite, 101
Kahului, HI 96732

Mail Box

Complainant: Edgar Coral
Assistant Regional Counsel
U.S. EPA Region IX (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105

Dated at San Francisco, California, this 3 of ^{December}~~November~~, 2018



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street, 12th Floor (ORC)
San Francisco, CA 94105