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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
) DOCKET NO. TSCA-10-2012-0136  
)  
)  
Curtis O. Baney Marital Trust )  
475 NE Bellevue Drive #210 )  
Bend, Oregon 97701 )  
)  
)  
Respondent. )

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to TSCA Section 16, 15 U.S.C. § 2615, and 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, EPA issues, and

Curtis O. Baney Marital Trust (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Air, Waste and Toxics, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 16 of TSCA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1 Title X of the Residential Lead-based Paint Hazard Reduction Act (which became part of the Toxic Substances Control Act (TSCA)), and EPA’s regulations implementing this law, the Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property Rule (Disclosure Rule), 40 C.F.R. Part 745, Subpart F, require a lessor, when leasing target housing (i.e. housing built before 1978), to disclose information regarding lead paint and lead-based paint hazards to lessees.

3.2 Under 40 C.F.R. § 745.113(b)(1), a lessor must provide, within or as an attachment to each lease contract, a lead warning statement.

3.3 Under 40 C.F.R. § 745.113(b)(2), a lessor must provide, within or as an attachment to each lease contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

3.4 Under 40 C.F.R. § 745.113(b)(3), a lessor must provide, within or as an attachment to each lease contract, a list of any records or reports available to lessor relevant to lead-based paint and/or lead-based paint hazards in target housing which were provided to the lessees, or a statement indicating that no such reports or records are available.

3.5 Under 40 C.F.R. § 745.113(b)(4), a lessor must obtain, within or as an attachment to each lease contract, a statement from each lessee affirming receipt of the lead-based paint disclosure statement required by 40 C.F.R. § 745.113(b)(2), a list of any records and reports available to lessor relevant to lead-based paint and/or lead-based paint hazards required by 40 C.F.R. § 745.113(b)(3), and the EPA-approved pamphlet entitled "Protect Your Family from Lead in Your Home" required by 15 U.S.C. § 2686.

3.6 Under 40 C.F.R. § 745.113(b)(6), a lessor of target housing must obtain, within or as an attachment to each lease contract, the signatures of lessors, agents, and lessees certifying the accuracy of their statements and dates of signatures.

3.7 Respondent is the owner and lessor of properties in Klamath Falls, Oregon located at: 1920 Arthur Street #15, 1920 Arthur Street #7, 1920 Arthur Street #20, 1920 Arthur Street #24, 1920 Arthur Street #26, 1920 Arthur Street #38, 220 North 4<sup>th</sup> Street #5, 220 North 4<sup>th</sup> Street #16, and 220 North Street #19.

3.8 Respondent's properties, enumerated above, are classified as target housing as defined in 40 C.F.R. § 745.103.

3.9 From 2007-2010, Respondent leased the units listed above in Paragraphs 3.7 at least 16 times.

3.10 For nine of the leases, Respondent failed to provide, within or as an attachment to each lease contract, a lead warning statement in violation of 40 C.F.R. § 745.113.

3.11 For nine of the leases, Respondent failed to provide, within or as an attachment to each lease contract, 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 in violation of 40 C.F.R. § 745.113.

3.12 For nine of the leases, Respondent failed to provide, within or as an attachment to each lease contract, a list of any records or reports available to the lessor relevant to lead-based paint and/or lead-based paint hazards in target housing which were provided to the lessees or a statement indicating that no such reports or records are available in violation of 40 C.F.R. § 745.113.

3.13 For 16 of the leases, Respondent failed to obtain, within or as an attachment to each lease contract, a statement from each lessee affirming receipt of lead-based paint disclosure statement, a list of any records and reports available to the lessor relevant to lead-based paint and/or lead-based paint hazards, and an EPA-approved pamphlet entitled "Protect Your Family from Lead in Your Home" in violation of 40 C.F.R. § 745.113.

3.14 For nine of the leases, Respondent failed to obtain, within or as an attachment to each lease contract, the signatures of the lessors, agents, and lessees certifying the accuracy of their statements and dates of signatures in violation of 40 C.F.R. § 745.113.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations contained in Part I of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. In light of the nature of the violation, Respondent's actions to correct the violations after having been notified by Complainant, and Respondent's willingness to settle this matter without litigation, and in accordance with the *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is twenty-four thousand six hundred dollars (\$24,600).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Section V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Barbara Ross, TSCA Compliance Officer  
U.S. Environmental Protection Agency

Region 10, Mail Stop AWT-128  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. Each party shall bear its own costs in bringing or defending this action.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.9. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

4.10. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in

Section III and is currently in compliance with all applicable TSCA requirements at each of the facilities under its control.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

6/11/12

FOR RESPONDENT:



CURTIS BANEY, Trustee  
Curtis O. Baney Marital Trust

DATED:

6/20/12

FOR COMPLAINANT:



RICHARD ALBRIGHT, Director  
Office of Air, Waste and Toxics  
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 21<sup>st</sup> day of June, 2012.



THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



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Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Curtis O. Baney Marital Trust, Docket No. TSCA-10-2012-0136**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

HEARINGS CLERK  
EPA -- REGION 10

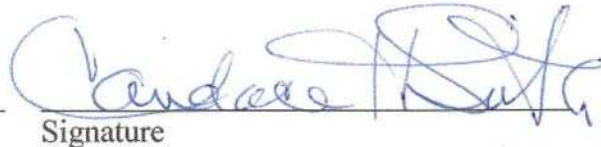
The undersigned certifies that a true and correct copy of the document was delivered to:

Jillian Bunyan  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Curtis Baney  
Curtis O. Baney Marital Trust  
475 NE Bellevue Drive #210  
Bend, Oregon 97701

DATED this 21<sup>st</sup> day of June, 2011

  
Signature

Candace H. Smith  
Print Name

Regional Hearing Clerk  
EPA Region 10