



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 18, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8364
RETURN RECEIPT REQUESTED

Mr. John S. Johnson
Grace-Whitney Properties, LLC
2747 Secretariat Ct.
Evansville, Indiana 47730

Consent Agreement and Final Order In the Matter of
Grace-Whitney Properties, LLC, Docket No. TSCA-05-2015-0005

Mr. Johnson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on March 18, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$943 is to be paid in the manner described in paragraphs 29 and 30. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Grace-Whitney Properties, LLC
Evansville, Indiana

Respondent.



Docket No. TSCA-05-2015-0005

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and 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 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Grace-Whitney Properties, LLC, a corporation with a place of business located at 2747 Secretariat Court, Evansville, Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule), pursuant to 42 U.S.C. § 4852d.

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

12. 40 C.F.R. § 745.103 defines “lessor” as 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.

13. 40 C.F.R. § 745.103 defines “lessee” as 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.

14. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and the signatures and dates of signature of the lessor.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

16. The Administrator of EPA may assess a civil penalty of up to \$16,000 for each violation of Section 409 of TSCA that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Background

17. Between September 18, 2009 and March 31, 2010, Respondent owned residential dwellings in Evansville, Indiana, at 523 Jefferson Avenue and 312 Louisiana Street (Respondent's properties).

18. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

19. On the following dates, Respondent, either directly or through its authorized agent, entered into the following two lease agreements (contracts) with individuals for the lease of Respondent's properties:

| Address | Date of Lease |
|--|--------------------|
| 523 Jefferson Avenue, Evansville, Indiana | September 18, 2009 |
| 312 East Louisiana Street, Evansville, Indiana | March 31, 2010 |

20. Each of the two contracts referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because it offered the target housing referred to in paragraph 19, above, for lease.

22. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 19, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

23. Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent’s properties at 523 Jefferson Avenue and 312 East Louisiana Street, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondent’s properties at 523 Jefferson Avenue and 312 East Louisiana Street, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract

or as an attachment to the contract for the lease of Respondent's properties at 523 Jefferson Avenue and 312 Louisiana Street, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Respondent's properties at 523 Jefferson Avenue and 312 East Louisiana Street, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondent failed to include the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondent's properties at 523 Jefferson Avenue and 312 East Louisiana Street, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

28. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$943. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations and, with respect to Respondent, the ability to pay, the effect on ability to continue to do business, any history of such prior violations, the degree of culpability and Respondent's agreement to perform a supplemental environmental project. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$943 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must state Grace-Whitney Properties, LLC and the docket number of this CAFO.

30. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 29, above, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

34. Respondent must complete a supplemental environmental project (SEP) designed to protect the public health by replacing at total of 14 windows at 1034 Adams Street; 1201 South Elliott Avenue; and 655 East Riverside Avenue, Evansville, Indiana, with double hung replacement windows. All lead-based paint activities must be performed pursuant to 40 C.F.R. § 745.227(a) and shall be conducted only by an individual(s) certified with the EPA.

35. Respondent must complete the SEP within 180 days from the filing of this CAFO. Respondent must have lead clearance testing performed by a certified risk assessor. The SEP and the lead clearance testing may not be performed by the same individual or entity.

36. Respondent must spend at least \$8,483 to conduct lead-based paint abatement by replacing windows.

37. Respondent certifies as follows:

I certify that Grace-Whitney Properties, LLC is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Grace-Whitney Properties, LLC has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Grace-Whitney Properties, LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

38. Respondent must conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition) and the Indiana State Department of Health, unless otherwise specifically provided in this CAFO.

39. EPA may inspect target housing 1034 Adams Street; 1201 Elliott Avenue; and 655 East Riverside Avenue, Evansville, Indiana, at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

40. Respondent must submit a SEP completion report to EPA by September 15, 2015.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO;

- e. Description of the environmental and public health benefits resulting from the SEP; and
- f. Documentation demonstrating that the SEP was performed in compliance with the Work Practice Standards at 40 C.F.R. § 745.85.

41. Respondent must submit all notices and reports required by this CAFO by first class mail to Pamela Grace of the Pesticides and Toxics Compliance Section at the address provided in paragraph 30, above.

42. The report that Respondent submits as provided by this CAFO, must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

43. Following receipt of the SEP completion report described in paragraph 40, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 45, below.

44. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not

complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 45, below.

45. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If the Respondent has spent less than the amount set forth in paragraph 36, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 36.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 36, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent did not submit timely the SEP completion report required by paragraph 40, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|---|
| \$50 | 1 st through 14 th day |
| \$75 | 15 th through 30 th day |
| \$100 | 31 st day and beyond |

46. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

47. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 30, above, and will pay interest, handling charges and penalties on overdue amounts as specified in paragraph 32, above.

48. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

49. Any public statement that Respondent makes referring to the SEP must include the following language, "Grace-Whitney Properties, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Grace-Whitney Properties, LLC for violations of Section 409 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. § 745.113(b).

50. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

51. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

52. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

53. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state and local laws.

54. Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

55. The terms of this CAFO bind Respondent, and its successors and assigns.


56. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

57. Each party agrees to bear its own costs and attorneys' fees in this action.

58. This CAFO constitutes the entire agreement between the parties.

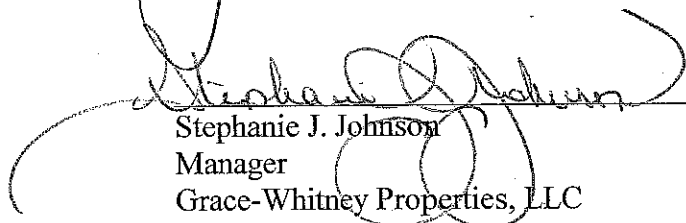
Grace-Whitney Properties, LLC, Respondent

1-20-15
Date



John S. Johnson
Member
Grace-Whitney Properties, LLC

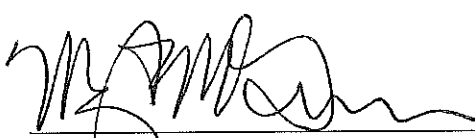
1/20/15
Date



Stephanie J. Johnson
Manager
Grace-Whitney Properties, LLC

United States Environmental Protection Agency, Complainant

3/9/2015
Date



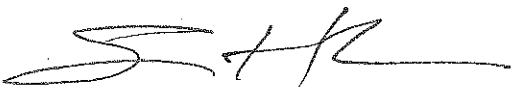
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Grace-Whitney Properties, LLC
Docket No. TSCA-05-2015-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-13-2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Grace-Whitney Properties, LLC
Docket Number: TSCA-05-2015-0005

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on March 18, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. John S. Johnson
Grace-Whitney Properties, LLC
2747 Secretariat Ct.
Evansville, Indiana 47730

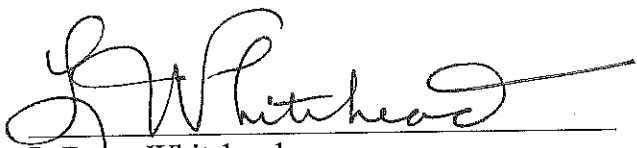
Copy by E-mail to
Attorney for Complainant:

Susan Tennenbaum
Tennenbaum.susan@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: March 18, 2015


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8364