



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

One Congress Street, Suite 1100 (SEP)
Boston, Massachusetts 02114-2023

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2009 MAY 18 A 10:10

BY HAND

May 18, 2009

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 (New England)
One Congress St., Suite 1100 (RCH)
Boston, MA 02114-2023

REGIONAL HEARING CLERK

Re: In the Matter of: J.W. Graham & Son, Inc., Docket No. TSCA-01-2009-0023
Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing in the above-mentioned enforcement case the original and one copy of the Consent Agreement and Final Order ("CAFO"). This CAFO effectively concludes the matter. I hereby certify that, on this date, I served a copy of the CAFO on Respondent, by certified mail.

If you have any questions, please contact me at 617-918-1404.

Thank you for your assistance in this matter.

Sincerely,

Peter Kudarauskas, Environmental Engineer
Toxics and Pesticides Unit
Office of Environmental Stewardship
EPA Region 1

Enclosures

cc: Peter V. Vitello, J.W. Graham & Son, Inc. (certified mail)

EPA DOCKET NO. TSCA-01-2009-0023
In re: J.W. Graham & Son, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

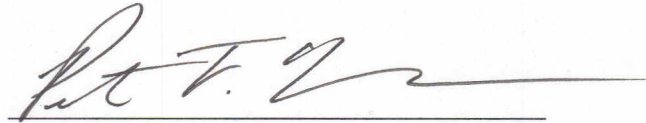
Original and one copy,
hand-delivered:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street, Suite 1100 (Mail Code: RAA)
Boston, MA 02114-2023

Copy of Consent Agreement
and Final Order,
First Class Mail,
Return Receipt requested:

Peter V. Vitello
J.W. Graham & Son, Inc.
247 Plymouth Street
Holbrook, MA 02343

Dated: 5/18/2009



Peter F. Kudarauskas
Environmental Engineer
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (Mail Code: SEP)
Boston, MA 02114-2023
Tel. 617-918-1404
Fax 617-918-0404

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)**

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EPA Docket No. TSCA-01-2009-0023

**CONSENT AGREEMENT and
FINAL ORDER**

EPA OFFICE
OF
GENERAL COUNSEL
AND CLERK

In the Matter of:)
)
)
J.W. Graham & Son, Inc.)
247 Plymouth Street)
Holbrook, MA 02343)
)
Respondent)
_____)

I. INTRODUCTION

The United States Environmental Protection Agency - Region 1 ("EPA"), as Complainant, and J.W. Graham & Son, Inc. ("Graham"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against Graham for alleged violations of Section 406(b) of the Toxic Substances Control Act ("Act" or "TSCA"), 15 U.S.C. § 2686(b) and the federal regulations promulgated thereunder, set forth at 40 C.F.R. Part 745, Subpart E ("Pre-Renovation Rule"). Failure to comply with any regulatory requirement set forth in 40 C.F.R. Part 745, Subpart E, constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA are subject to the assessment of civil and/or criminal penalties. The CAFO also informs Respondent of its right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 16 of TSCA, 15 U.S.C. § 2615. Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of

any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. Respondent is a corporation organized under the laws of Massachusetts, has its principal place of business at 247 Plymouth Street, Holbrook, Massachusetts, and is a "person" as defined in 40 C.F.R. § 745.83. Graham is a painting company that specializes in exterior and interior painting of residences and churches.

2. On August 13, 2008, EPA conducted an inspection to evaluate Graham's compliance with the Pre-Renovation Rule between July 2005 and July 2008.

3. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

4. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

5. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 406(b) of TSCA and the Pre-Renovation Rule.

III. EPA FINDINGS

6. Pursuant to 40 C.F.R. § 745.85, the Pre-Renovation Rule requires that renovators provide the owner of a dwelling unit built prior to 1978 with a copy of EPA's lead hazard information pamphlet no more than 60 days before beginning renovation activities and obtain written acknowledgment that the owner has received the pamphlet or obtain a certificate of mailing at least seven days prior to the renovation. Pursuant to 40 C.F.R. § 745.82(b), the Pre-Renovation Rule requirements do not apply if the renovation projects are "minor repair and maintenance activities," are "emergency renovation operations" or if the renovator obtains written determinations that dwelling units are lead-based paint free. As defined at 40 C.F.R. § 745.83, the term *renovation* includes the removal or modification of painted surfaces including surface preparation such as sanding, scraping or other such activities that may generate paint dust and the term *renovator* means any person who performs for compensation a renovation.

7. EPA received information from Graham indicating that Graham was a renovator who conducted renovation work at 41 residential dwelling units built prior to 1978 between July 2005 and July 2008 (a list of these residential dwelling units and approximate date of renovations is attached to this CAFO as Appendix A). The information received by EPA did not indicate that these renovation projects were exempted from the requirements of the Pre-Renovation Rule under 40 C.F.R. § 745.82(b).

8. Based on statements and information provided to EPA by Graham, EPA alleges that

Graham failed to comply with Section 406(b) of TSCA, 15 U.S.C. § 2686(b), and the Pre-Renovation Rule, 40 C.F.R. Part 745, Subpart E, before it conducted renovation work at the 41 residential dwelling units listed in Appendix A. Graham's failure to comply with Section 406(b) of TSCA and the Pre-Renovation Rule on 41 separate occasions constitutes 41 separate violations of 40 C.F.R. § 745.85 and Section 409 of TSCA.

IV. TERMS OF SETTLEMENT

9. In light of the above, and taking into account the factors enumerated in Section 16 of TSCA, EPA's *Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA; PCB Penalty Policy*, as published in the Federal Register at 45 Fed. Reg. 59770 (September 10, 1980) and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of four thousand eight hundred six dollars (\$4,806) in settlement of the violations alleged herein.

10. Respondent shall pay the penalty of \$4,806 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

11. Respondent shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$4,806, to:

U.S. EPA, Region 1
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code RAA)
One Congress Street, Suite 1100
Boston, MA 02114-2023

and

Peter Kudarauskas
U.S. Environmental Protection Agency
Region 1 (Mail Code: SEP)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Respondent shall include the case name and docket number (*In re: J.W. Graham & Son, Inc.*, TSCA-01-2009-0023) on the face of the check.

12. If Respondent fails to pay the civil penalty it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should

assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

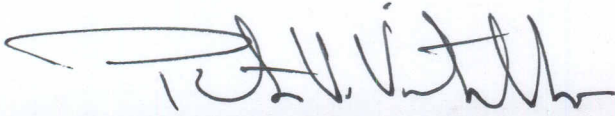
13. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

14. This CAFO constitutes a settlement of the claims set forth in paragraphs 1 through 8 of his CAFO for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for violations of TSCA Section 409, 15 U.S.C. § 2689, and 40 C.F.R. Part 745, Subpart E. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

15. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

16. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

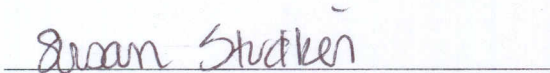
For Respondent:



Date: 4/14/09

Name: PETER V. VITELLO
Title: CO-OWNER
J.W. Graham & Son, Inc.

For EPA Region 1:



Date: 05/13/09

Office of Environmental Stewardship
EPA Region 1

Appendix A

In re: *J.W. Graham & Son, Inc.*, Docket No. TSCA-01-2009-0023

LOCATION OF RENOVATIONS CONDUCTED BY
J.W. GRAHAM & SON, INC. IN PRE-1978 DWELLING UNITS BETWEEN
JULY 2005 and JULY 2008

	Location	Approximate Date of Renovation
1	19 Linden Avenue, Scituate, MA	7/14/2005
2	44 Raymond Street, East Weymouth, MA	8/8/2005
3	541 Pleasant Street, Weymouth, MA	8/3/2005
4	26 French Street, Hingham, MA	10/14/2005
5	2 Sudbury Road, Weston, MA	9/12/2005
6	63 Mount Vernon Street, Weymouth, MA	10/27/2005
7	198 Merrymount Road, Quincy, MA	10/26/2005
8	8 Milton Terrace, Randolph, MA	12/7/2005
9	14 Harvest Lane, Hingham, MA	11/23/2005
10	116 Nightingale Avenue, Quincy, MA	12/6/2005
11	25 Elmira Street, Brighton, MA	11/26/2005
12	36 Shore Garden Road, Hull, MA	2/27/2006
13	55 Tall Oaks Drive, Weymouth, MA	3/21/2006
14	55 Tall Oaks Drive, Weymouth, MA	10/17/2006
15	77 Ryder Road, Harwich, MA	5/3/2006
16	46 Dickens Street, Quincy, MA	5/26/2006
17	12 Dixon Park Road, Weymouth, MA	6/3/2008
18	67 Cedarhill Road, Holbrook, MA	6/15/2006
19	60 Phillips Circle, Waltham, MA	6/30/2006
20	111 Nichols Road, Cohasset, MA	10/15/2006
21	348 Webster Street, Needham, MA	12/11/2006
22	28 Greenwood Road, Quincy, MA	10/30/2006
23	91 Davis Street, Quincy, MA	11/28/2006
24	15 Hyde Street, Weymouth, MA	12/11/2006
25	715 Jerusalem Road, Cohasset, MA	4/27/2007
26	4 Forest Notch, Cohasset, MA	5/16/2007
27	47 Old County Road, Hingham, MA	5/21/2007
28	98 Mill River Road, Weymouth, MA	5/18/2007
29	109 Hibiscus Street, Weymouth, MA	5/21/2007
30	55 Lantern Lane, Cohasset, MA	5/30/2007
31	2 Arlington Street, Cambridge, MA	6/21/2007
32	78 Mount Pleasant Avenue, Holbrook, MA	6/20/2007

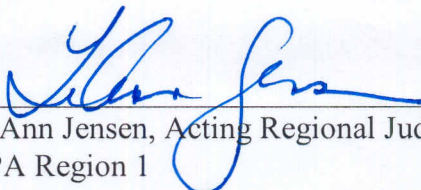
LOCATION OF RENOVATIONS CONDUCTED BY
J.W. GRAHAM & SON, INC. IN PRE-1978 DWELLING UNITS BETWEEN
JULY 2005 and JULY 2008 (Page 2 of 2)

33	288 Friar Oaks Lane, Cohasset, MA	7/6/2007
34	6 Deepwoods Drive, Matapoissett, MA	8/13/2007
35	288 Thicket Street, Weymouth, MA	9/5/2007
36	36 Shore Garden Road, Hull, MA	12/3/2007
37	74 School Street, Hingham, MA	12/22/2007
38	20 Dewson Road, Quincy, MA	1/26/2008
39	188 Columbia Street, Weymouth, MA	3/22/2008
40	32 Bower Road, Braintree, MA	7/8/2008
41	78 Regatta Road, North Weymouth, MA	7/7/2008

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, J.W. Graham & Son, Inc., is ordered to comply with the terms of the above Consent Agreement, effective upon its filing with the Regional Hearing Clerk.

Date: 5/13/09



LeAnn Jensen, Acting Regional Judicial Officer
EPA Region 1