

**Environmental  
Protection Agency**

**Governor  
Lt. Governor  
Director**

October 6, 2011

RE: FORMER DESANTIS PAINT MFG CO.  
OHD 004 186 649  
CUYAHOGA COUNTY  
COMPLAINT #7453  
NOV

Number One Grace Properties, LLC  
Attn: Mrs. Danielle Agnello  
4060 E. 116<sup>th</sup> Street  
Cleveland, OH 44105

**CERTIFIED MAIL**

Dear Mrs. Agnello:

On September 2, 2011, Ohio EPA conducted a complaint investigation at the former Desantis Paint Mfg. Co. (Desantis) site located at 4101 E. 116 Street, Cleveland, Ohio. Frank Zingales and I represented Ohio EPA. Jim Augustyn represented US EPA. Brian Walters, shop manager of Eagle Auto Glass stated that he spoke with Carmine Agnello, owner of Eagle Auto Glass, who stated he had no objections to Ohio and US EPA inspecting the property. According to records, Number One Grace Properties, LLC (Grace) took ownership of this site on December 2, 2010. Currently Eagle Auto Glass operates their business on a portion of the property.

Background:

A Phase 1 Environmental Site Assessment (Phase 1) dated November 4, 2010, of the former Desantis Paint Co. was completed by URS. The Phase 1 indicates hundreds of containers and several tanks (both above and below ground) containing wastes and unknown material were left at the time Desantis abandoned the site during the calendar year 2007. The Phase 1 recommended further evaluation of the property, including determining the contents of the containers and tanks.

In May 2011, a representative from the US EPA Brownfield Program referred the site to the US EPA Emergency Response Branch to conduct a removal assessment. A removal assessment was conducted in June 2011. A report of this assessment was sent to US EPA August 9, 2011. This report indicates that the waste generated by Desantis from their operations as well as waste generated from the abandonment by Desantis was hazardous waste, as defined in Ohio Administrative Code (OAC) rule 3745-51-03. Specifically sampling indicated that several 55 gallon containers, other smaller containers, as well as some of the underground storage tanks were storing, and continue to store hazardous waste, which at a minimum, exhibit the characteristics of ignitability (as described in OAC rule 37456-51-21) and lead (as described in OAC rule 3745-51-24).

Based upon this information, Ohio EPA has determined that Grace is in violation of the following:

1. ***Establishing and operating a hazardous waste facility without a hazardous waste installation and operation permit and storing hazardous waste without a permit, Ohio Revised Code (ORC) § 3734.02 (E) and (F):*** No person shall establish or operate a hazardous waste facility for the storage, treatment, or disposal of hazardous waste without a hazardous waste facility installation and operation permit issued in accordance with section 3734.05 of the Revised Code nor shall they store, treat, or dispose of hazardous waste, regardless of whether the waste was generated on or off the premises without a permit.

Grace became the property owner where hazardous waste was, at a minimum, being unlawfully stored. At the time of Grace's ownership of the property, the hazardous waste generated by Desantis from their previous operations and abandonment had been stored greater than 90 days, the maximum time allowed for a generator to store hazardous waste without a permit. Therefore, even prior to Grace's ownership, the property was, at a minimum, an unlawful hazardous waste storage facility. As the owner of an unpermitted hazardous waste facility, Grace is responsible for the proper management of hazardous waste at the site.

Ohio EPA noted that the containers that tested hazardous were located on the first floor of the eastern portion of the building; on the second floor and on the eastern side of the building. The tanks which contain hazardous waste are found on the eastern portion of the property.

Mr. Walker indicated that no one at Eagle Auto Glass moved any containers containing material. It does appear from the photos in the Phase 1 and observations made by Ohio EPA, that materials were moved by someone. Specifically in the elevated area in the western portion of the building currently being used by Eagle Auto Glass and the hallway in the southern portion of the building.

Grace must characterize the contents of the remaining containers and tanks in accordance with OAC rule 3745-52-11. Once the contents are known, the hazardous waste must be managed in accordance with all applicable hazardous waste requirements.

Please be advised that due to the nature of the violation, Grace is subject to the hazardous waste closure requirements pursuant to OAC rules 3745-55-11 through 3745-55-20 and OAC rules 3745-55-42 through 3745-55-47 at this site.

Furthermore, since Grace violated ORC §3734.02(E) and (F), Grace, as the owner of an unpermitted hazardous waste facility, is subject to all applicable general facility standards found in OAC chapters 3745-54 and 55. Additionally, at any time Ohio EPA may assert its right to require Grace facility-wide cleanup pursuant to the Corrective Action process under Ohio law.

#### Cessation of Regulated Operations

Desantis was subject to chemical inventory reporting to the State Emergency Response Commission (SERC - EPCRA Tier II Chemical Inventory Report). The last SERC report was submitted in 2007. Desantis was therefore subject to Ohio's Cessation of Regulated Operations (CRO) requirements. The new owner, Grace, needs to complete the CRO required by Desantis operations.

Therefore, Ohio EPA has found that Grace is in violation of the following:

2. ***Obligations under the Cessation of Regulated Operations Requirements, OAC rule 3745-352-20***
  - Within 30 days of the date of purchase, the new owner must submit a notice to the director of Ohio EPA, the local emergency planning commission (LEPC) and the local fire department using form EPA 0327. A copy of this form can be found at: <http://www.epa.state.oh.us/dhwm/cro/epa0327.pdf>. Please note, in Section 5.1, date of permanent cessation of regulated operations, please use the date of purchase.

In addition, even though Eagle Auto Glass is operating out of a portion of the building, the new owner will need to secure the facility in accordance with OAC rule 3745-352-30. This includes securing the buildings against unauthorized entry. You will also need to post warning signs at all facility access locations. The warning signs must prohibit trespassing and state: "The building, structure, or outdoor location of operation contains or is contaminated with regulated substances that may endanger public health or safety if released into the environment". For further information on security, including the requirement of weekly inspections, please see that enclosed CRO Guidance.

- Within 90 days of the date of purchase, the new owner must certify that all actions required under the cessation of regulated operation rules and regulations have been met. For further information on what materials and waste must be removed, including the requirement to drain or remove all regulated substances from each stationary and non-stationary container, tank, vat, electrical transformer and vessel, and from all piping that is to remain at the facility that contains or is contaminated with regulated substances. Please see the attached CRO Guidance for additional information.

The certification the new owner will need to submit to the Director is form EPA 0329. This form can be found at: <http://www.epa.state.oh.us/dhwm/cro/epa0329.pdf>.

Since you will need additional time beyond the 90 days to comply with the CRO regulations, you should submit a written request to the director per OAC rule 3745-352- 20(A)(3).

Should you have any additional questions, please feel free to contact me or my supervisor, Frank Popotnik at (330) 963-1159.

Sincerely,



Karen L. Nesbit  
Division of Materials and Waste Management

KLN:ddw  
Enclosure

ec: Frank Popotnik, DMWM, NEDO  
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