



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

February 26, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

**CERTIFIED MAIL: No.7011 1150 0000 2643 8128**

**RETURN RECEIPT REQUESTED**

Mr. Daniel Cheatum  
Capitol Painting & Decorating  
616 Bakersfield Road  
Carbondale, Illinois 62901

Consent Agreement and Final Order In the Matter of  
Capitol Painting & Decorating, Docket No. TSCA-05-2015-0004

Mr. Cheatum:

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 February 26, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$720 is to be paid in the manner described in paragraphs 37 and 38. 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 black ink, appearing to read "P. Fericelli".

Paul Fericelli  
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Daniel Cheatum d/b/a  
Capitol Painting & Decorating  
Carbondale, Illinois

Respondent.

) Docket No. TSCA-05-2015-0004  
)  
) 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, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Daniel Cheatum, doing business as Capitol Painting & Decorating, a sole proprietorship or an individual doing business with a place of business at 616 Bakersfield, Carbondale, Illinois.
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 and alleged violations in this CAFO.

50. 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, its right to appeal this CAFO and any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review with respect to any issue of fact or law set forth in this CAFO.

**Statutory and Regulatory Background**

9. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. These regulations prescribe work practice standards and ensure that individuals engaged in such activities are properly trained, the training programs are accredited, and contractors engaged in such activities are certified.

10. 40 C.F.R. § 745.83 defines “firm” as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal or local government agency; or a nonprofit organization.

11. 40 C.F.R. § 745.83 defines “person” as, among other things, any natural or judicial person including any individual, corporation, partnership or association.

12. 40 C.F.R. § 745.83 defines “renovation” as the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that

activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

13. 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 six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

14. Under 40 C.F.R. § 745.82(a)(2)(ii), no firm may perform, offer, or claim to perform renovations on or after April 22, 2010 without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for an exception not relevant here.

15. 40 C.F.R. § 745.89(a) requires that firms that perform renovations for compensation must apply and obtain certification from EPA to perform renovations or dust sampling. *See also* 40 C.F.R. § 745.85(a).

16. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689.

17. The Administrator of EPA may assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA that occurred after January 12, 2009 pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615, 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

18. Respondent is an individual and is therefore a “person” as defined in 40 C.F.R. § 745.83.

19. Respondent is a sole proprietor or an individual doing business and is therefore a “firm” as defined in 40 C.F.R. § 745.83.

20. On November 12, 2013, EPA received information from the Jackson County Illinois Health Department indicating that Respondent was conducting renovation work at a single-family dwelling located at 1910 Division Street, Murphysboro, Illinois (the Property).

21. On November 15, 2013, the Jackson County Illinois Health Department confirmed that the work referenced in paragraph 20 had been completed and that the work included scraping paint and painting at the Property.

22. The Property was constructed prior to 1978, and is therefore “target housing” as defined in 40 C.F.R. § 745.103.

23. The work that Respondent conducted at the Property and described in paragraphs 20 and 21 was a modification of the building’s existing structure that resulted in the disturbance of painted surfaces, and is therefore a “renovation” as defined in 40 C.F.R. § 745.83.

24. At the time the renovation was conducted, Respondent was not listed as a certified firm in EPA's database of Certified Renovation and Dust Lead Sampling Technician Firms found at the following website: [http://cfpub.epa.gov/flpp/searchrrp\\_firm.htm](http://cfpub.epa.gov/flpp/searchrrp_firm.htm).

25. On November 26, 2013, EPA issued a Show Cause Letter to Respondent requesting, among other things, that Respondent comply with or provide evidence of compliance with the firm certification requirement of the RRP Rule.

26. The November 26, 2013 Show Cause letter offered Respondent the opportunity to participate in an expedited settlement agreement, which offered a substantially reduced penalty for the failure to obtain firm certification if the participating firm immediately came into compliance and submitted proof of certification to EPA within the required timeframes. Respondent declined to participate in an expedited settlement agreement.

27. On December 12, 2013, Respondent submitted a response to EPA's November 26, 2013 Show Cause Letter that did not contain the required firm certification under 40 C.F.R. § 785.89(a) and 40 C.F.R. § 745.81(a)(2)(ii).

28. On or about January 9, 2014, EPA contacted Respondent by telephone to verify whether Respondent had failed to apply for and obtain firm certification. During this call, Respondent admitted that it did not have any such firm certification.

29. On or about June 4, 2014, Respondent obtained certification from EPA to perform renovations as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

#### Count 1

30. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

31. Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations on or after April 22, 2010 without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities.

32. Under 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

33. Respondent did not apply and obtain certification from EPA to perform renovations under 40 C.F.R. § 745.89 before performing the renovation described in paragraphs 20 and 21.

34. Respondent's failure to apply and obtain certification from EPA to perform renovations before performing the renovation referred to paragraphs 20 and 21 violates 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a), which is prohibited by Section 402 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a).

#### **Proposed Civil Penalty**

36. 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 \$720. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered *EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010 and the *Pilot Renovation, Repair and Painting ("RRP") Rule Penalty Program for Micro-Businesses*, dated May 3, 2012.

37. Respondent must pay a \$720 civil penalty with interest in two installments as follows: \$360.30 within 30 days of the effective date of this CAFO; and \$361.50 within 180

days of the effective date of this CAFO.

<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principle</u>	<u>Interest</u>
Payment #1	Within 30 days of effective date of CAFO	\$360	\$720	\$0.30
Payment #2	Within 180 days of effective date of CAFO	\$360	\$0	\$1.50

38. Respondent must pay the installments by sending cashier's or certified checks, payable to "Treasurer, United States of America," to:

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

The checks must note the following: the case title ("In the Matter of Daniel Cheatum d/b/a Capitol Painting & Decorating") and the docket number of this CAFO.

39. A transmittal letter stating Respondent's name, complete address and the case docket number must accompany each payment in paragraph 37. Respondent must send a copy of each check and transmittal letter to:

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

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

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



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

41. If Respondent does not pay any installment payment as set forth in paragraph 37, above, the entire unpaid balance of the civil penalty, and any amount required by paragraph 42, below, shall become due and owing, upon written notice by EPA to Respondent of the delinquency. 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.

42. 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 payment was due at a rate established by the Secretary of the Treasury. 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.

#### **General Provisions**

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

44. 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.

45. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, and other applicable Federal, State, and local laws.

46. Respondent certifies that it is complying with Section 402 of TSCA, 15 U.S.C. § 2682, and the applicable regulations at 40 C.F.R. Part 745.

47. This CAFO is a "final order" for purposes of EPA's TSCA Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule.

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

49. Each person signing this CAFO 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.


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

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

**In the Matter of: Daniel Cheatum d/b/a Capitol Painting & Decorating  
Docket No.**

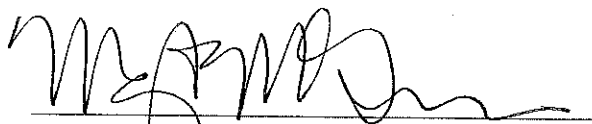
**Daniel Cheatum d/b/a Capitol Painting & Decorating**

10/20/14  
Date

  
Daniel Cheatum  
Sole Proprietor/Owner

**U.S. Environmental Protection Agency, Complainant**

2/17/2015  
Date

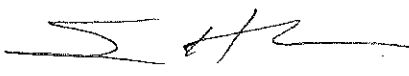
  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of: Daniel Cheatum d/b/a Capitol Painting & Decorating  
Docket No. TSCA-05-2015-0004**

**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.

2/20/2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

In the matter of: Capitol Painting & Decorating  
Docket Number: TSCA-05-2015-0004

**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 February 26, 2015, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

Mr. Daniel Cheatum  
Capitol Painting & Decorating  
616 Bakersfield Road  
Carbondale, Illinois 62901

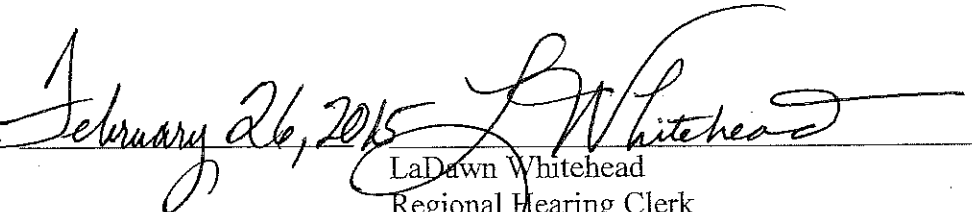
Copy by E-mail to  
Attorney for Complainant:

Kasey Barton  
[Barton.kasey@epa.gov](mailto:Barton.kasey@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated:

February 26, 2015   
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8128