

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2017 JAN 24 AM 7:57

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS**

**BEFORE THE ADMINISTRATOR**

**In the matter of** )  
 )  
**AMERICA'S CHOICE** )  
**CONSTRUCTION INC.,** )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**Docket. No. TSCA-07-2016-0039**

**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that the U.S. Environmental Protection Agency, Region 7 ("EPA"), has reason to believe that America's Choice Construction, Inc. ("Respondent"), has violated Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

**COMPLAINT**

**Jurisdiction**

1. This administrative action for the assessment of civil penalties is instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. 2615(a), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint.

**Parties**

2. Complainant, by delegation from the Administrator of the EPA, is the Chief of the Toxics and Pesticides Branch in the Water, Wetlands and Pesticides Division, EPA, Region 7.

3. Respondent America's Choice Construction, Inc. is a corporation in good standing operating under the laws of the state of Missouri.

## Statutory and Regulatory Background

4. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the "Act"), 42 U. S. C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. 42 U. S. C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U. S. C. §§ 2681 to 2692.

5. Section 402 of TSCA, 15 U. S. C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978.

6. In 1996, the EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U. S. C. § 2682(a). These regulations are set forth at 40 C. F. R. Part 745, Subpart L, *Lead-Based Paint Activities*. In 1998, the EPA promulgated regulations to implement Section 406(b) and Section 407 of TSCA, 15 U. S. C. § 2686(b) and 2687. These regulations were set forth at 40 C. F. R. Part 745, Subpart E, *Residential Property Renovation*. In 2008, the EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U. S. C. § 2682(c)(3), by amending and re-codifying regulations at 40 C. F. R. Part 745, Subparts E and L, and adding additional regulations at 40 C. F. R. Subpart L ("Renovation, Repair, and Painting Rule"). See *Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

7. The Renovation, Repair, and Painting Rule establishes work practice standards for renovations that disturb lead-based paint in target housing and child-occupied facilities and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

8. The regulations at 40 C. F. R. §§ 745. 80 and 745. 82(a) provide that the regulations contained in 40 C. F. R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities.

9. The regulation at 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.

10. Section 401(17) of TSCA, 15 U. S. C. § 2681(17), 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.

11. The regulation at 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.

12. The regulation at 40 C. F. R. § 745. 83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

13. The regulation at 40 C. F. R. § 745. 87(a) provides that failure or refusal to comply with any provision of 40 C. F. R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U. S. C. § 2689. Section 409 of TSCA, 15 U. S. C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C. F. R. Part 745, Subpart E.

14. The regulation at 40 C. F. R. § 745. 87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U. S. C. § 2615. Section 16(a) of TSCA, 15 U. S. C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U. S. C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U. S. C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U. S. C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U. S. C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U. S. C. § 2461, and implementing regulations at 40 C. F. R. Part 19 increased these statutory maximum penalties to \$37,500 for violations that occur after January 12, 2009.

### **General Factual Allegations**

15. On or about September 2, 2015, and pursuant to Section 11 of TSCA, 15 U. S. C. § 2610, representatives of the EPA conducted an inspection at 3219 Lafayette Avenue, St. Louis, Missouri (“the Property”), to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on November 3, 2015. Respondent is, and at all times referred to herein was, a corporation in good standing operating under the laws of the state of Missouri.

16. Respondent, at all times referred to herein, was a “person” and “firm” as defined by 40 C. F. R. § 745. 83.

17. At the time of the EPA inspection and at all times relevant to this Complaint, Respondent was engaged in a “renovation” of the Property as defined by 40 C. F. R. § 745. 83. The EPA inspection revealed that renovations commenced at the Property on or about July 27, 2015.

18. At all times relevant to this Complaint, Respondent's renovation was a "renovation for compensation" per 40 C. F. R. § 745. 82(a).

19. At all times relevant to this Complaint, the Property was "target housing" as defined by Section 401(17) of TSCA, 15 U. S. C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Property was built in 1900.

20. At all times relevant to this Complaint, the Property was owned by Karat Investments, LLC. The EPA inspection revealed that the property was unoccupied at the time of the renovation, and children less than six years of age neither occupied nor were present at the Property at the time of Respondent's renovation and the EPA inspection.

21. As a result of the EPA inspection and additional information obtained by the agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule and Section 409 of TSCA, 15 U. S. C. § 2689, occurred as a result of Respondent's renovation activities at the Property.

### **Alleged Violations**

22. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder as follows:

#### Count 1

23. Each and every preceding paragraph is incorporated by reference herein.

24. Pursuant to 40 C. F. R. § 745. 81(a)(2)(ii), firms performing renovations for compensation on or after April 22, 2010, must be certified by the EPA and have obtained initial certification prior to performance of renovations, unless the renovation qualifies for one of the exceptions identified in 40 C. F. R. § 745. 82. The regulation at 40 C. F. R. § 745. 89(a)(1) requires firms that perform renovations for compensation to apply to EPA for certification to perform renovations or dust sampling.

25. The EPA inspection revealed that Respondent had not applied for or obtained certification from the EPA to perform renovations or dust sampling prior to performing the renovation on the Property. Furthermore, the renovation did not qualify for one of the exceptions identified in 40 C. F. R. § 745. 82.

26. Respondent's failure to apply to the EPA for certification pursuant to 40 C. F. R. § 745. 89(a) prior to performance of the renovation on the Property is a violation of 40 C. F. R. § 745. 81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 2

27. Each and every preceding paragraph is incorporated by reference herein.

28. Pursuant to 40 C. F. R. § 745. 84(a)(1), firms performing renovation activities in any residential dwelling unit of target housing must provide the owner of the unit with the EPA pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* ("EPA Pamphlet") no more than 60 days before beginning the renovation.

29. The EPA inspection revealed that Respondent did not provide the owner of the Property with the EPA Pamphlet before beginning renovation activities on the Property.

30. Respondent's failure to provide the owner of the Property with the EPA Pamphlet before beginning renovation activities is a violation of 40 C. F. R. § 745. 84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 3

31. Each and every preceding paragraph is incorporated by reference herein.

32. Pursuant to 40 C. F. R. § 745. 89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C. F. R. § 745. 90.

33. The EPA inspection revealed that Respondent did not assign a certified renovator to the renovation performed on the Property.

34. Respondent's failure to ensure that a certified renovator was assigned to the renovation that the firm performed on the Property is a violation of 40 C. F. R. § 745. 89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 4

35. Each and every preceding paragraph is incorporated by reference herein.

36. Pursuant to 40 C. F. R. § 745. 81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C. F. R. § 745. 85. The regulation at 40 C. F. R. § 745. 85(a)(1) requires firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

37. The EPA inspection revealed that Respondent failed to post protective signs as required by 40 C. F. R. §745. 85(a)(1).

38. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation to remain outside of the work area is a violation of 40 C. F. R. § 745. 85(a)(1) pursuant to 40 C. F. R. § 745. 81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 5

39. Each and every preceding paragraph is incorporated by reference herein.

40. Pursuant to 40 C. F. R. § 745. 81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C. F. R. § 745. 85. The regulation at 40 C. F. R. § 745. 85(a)(2)(i)(B) requires firms to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

41. The EPA inspection revealed that, at the time of the inspection, Respondent did not close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

42. Respondent's failure to close cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material is a violation of 40 C. F. R. § 745. 85(a)(2)(i)(B) pursuant to 40 C. F. R. § 745. 81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 6

43. Each and every preceding paragraph is incorporated by reference herein.

44. Pursuant to 40 C. F. R. § 745. 81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C. F. R. § 745. 85. The regulation at 40 C. F. R. § 745. 85(a)(2)(i)(D) requires firms to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

45. The EPA inspection revealed that Respondent did not cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material.

46. Respondent's failure to cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material is a violation of 40 C. F. R. § 745. 85(a)(2)(i)(D) pursuant to 40 C. F. R. § 745. 81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 7

47. Each and every preceding paragraph is incorporated by reference herein.

48. Pursuant to 40 C. F. R. § 745. 81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C. F. R. § 745. 85. The regulation at 40 C. F. R. § 745. 85(a)(2)(ii)(A) requires firms to close all doors and windows within 20 feet of the renovation. On multi-story buildings, firms are required to close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

49. The EPA inspection revealed that Respondent did not close all doors and windows within 20 feet of the renovation as required by 40 C. F. R. § 745. 85(a)(2)(ii)(A).

50. Respondent's failure to close all doors and windows within 20 feet of the renovation is a violation of 40 C. F. R. § 745. 85(a)(2)(ii)(A) pursuant to 40 C. F. R. § 745. 81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 8

51. Each and every preceding paragraph is incorporated by reference herein.

52. Pursuant to 40 C. F. R. § 745. 81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C. F. R. § 745. 85. The regulation at 40 C. F. R. § 745. 85(a)(2)(ii)(B) requires firms to ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

53. The EPA inspection revealed that Respondent did not ensure that doors within the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area.

54. Respondent's failure to ensure that doors within the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area is a violation of 40 C. F. R. § 745. 85(a)(2)(ii)(B) pursuant to 40 C. F. R. § 745. 81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

Count 9

55. Each and every preceding paragraph is incorporated by reference herein.

56. Pursuant to 40 C. F. R. § 745. 81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C. F. R. § 745. 85. The regulation at 40 C. F. R. § 745. 85(a)(4)(i) requires firms to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

57. The EPA inspection revealed that Respondent did not contain waste from renovation activities at the Property before the waste was removed from the work area for storage or disposal.

58. Respondent's failure to contain waste from renovation activities in order to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal is a violation of 40 C. F. R. § 745.85(a)(4)(i) pursuant to 40 C. F. R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U. S. C. § 2689.

### **Relief Requested**

59. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U. S. C. § 2615, for violations of Section 409 of TSCA, 15 U. S. C. § 2689. Pursuant to Section 16 of TSCA, 15 U. S. C. § 2615, and based upon the facts set forth above, it is proposed that a civil penalty be assessed against Respondent.

60. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U. S. C. § 2615(a)(2)(B), including the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, the company's ability to pay, the effect on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

61. In order to assess a penalty for the violations alleged in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the EPA's August 2010 Interim Final Policy entitled "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (the "LBP Consolidated ERPP"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying to particular cases the statutory penalty factors enumerated above.

62. Complainant proposes that Respondent be assessed a civil penalty in the amount of Forty-Four Thousand Six-Hundred and Eighty Dollars (\$44,680) for the TSCA violations alleged in this Complaint. Attachment 1 to this Complaint provides documentation of Complainant's basis for the civil penalty proposed in this Complaint.

63. Complainant's civil penalty request is based on the best information available to the EPA at the time of this Complaint's issuance. The proposed penalty may be adjusted in the EPA's discretion if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate civil penalty amount.

### **Payment of Proposed Penalty in Full**

64. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total civil penalty of Forty-Four Thousand Six-Hundred



and Eighty Dollars (\$44,680) may be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

A copy of the check or other payment must simultaneously be sent to:

Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and to:

Raymond C. Bosch  
Office of Regional Counsel  
U. S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Payment should reference the name and docket number of this Complaint.

### **Payment of Proposed Penalty in Lieu of an Answer**

65. Respondent may resolve this proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint within thirty days of receipt of the Complaint, in accordance with the procedures set forth above. If Respondent wishes to resolve this proceeding by paying the proposed penalty in full instead of filing an answer but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty days of receipt of the Complaint, in accordance with Rule 22.18(a)(1) of the Consolidated

Rules of Practice. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the proposed penalty within sixty days of receipt of the Complaint. Failure to pay the full penalty within sixty days of receipt of the Complaint may subject Respondent to default, as set forth below.

## **NOTICE OF OPPORTUNITY FOR HEARING**

### **Answer and Request for Hearing**

66. Respondent must file a written answer within thirty days of receipt of this Complaint if Respondent: (a) contests any material fact upon which this Complaint is based; (b) contends that the penalty proposed in this Complaint is inappropriate; or (c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny, or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: (d) the circumstances or arguments which are alleged to constitute the grounds of any defense; (e) the facts that Respondent disputes; (f) the basis for opposing the proposed penalty; and (g) whether a hearing is requested.

67. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules of Practice:

Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

A copy of the answer shall be sent to:

Raymond C. Bosch  
Office of Regional Counsel  
U. S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

68. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter (except for the filing of a Consent Agreement and Final Order pursuant to 40 C. F. R. § 22.18(b)(3)) must be filed with the Hearing Clerk at the following addresses, as appropriate:

If using the U. S. Postal Service:

Hearing Clerk  
U. S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900R  
1200 Pennsylvania Avenue NW  
Washington, D. C. 20460

If using UPS/FedEx/DHL:

Hearing Clerk  
U. S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Avenue NW  
Washington, D. C. 20460

### **Default**

69. If, within thirty days of receipt of a Complaint, Respondent fails to: (a) submit full payment of the proposed penalty; (b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty days of receipt of the Complaint; or (c) file a written answer to the Complaint, Respondent may be found in default. Default by Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

### **Informal Settlement Conference**

70. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference please contact:

Raymond C. Bosch  
Office of Regional Counsel  
U. S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Office: (913) 551-7501

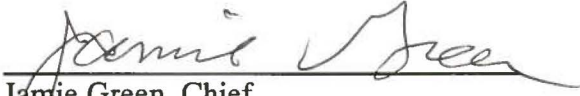
71. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22. 18(b)(2) of the Consolidated Rules of Practice.

No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

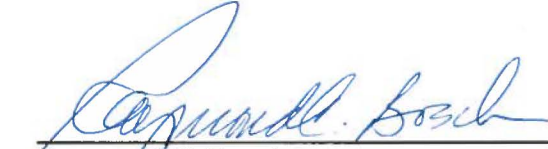
72. Please note that a request for an informal settlement conference does not extend the thirty day period during which a written answer must be filed.

**COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 4/19/2017

  
\_\_\_\_\_  
Jamie Green, Chief  
Toxics and Pesticides Branch  
Water, Wetlands and Pesticides Division

Date: June 19, 2017

  
\_\_\_\_\_  
Raymond C. Bosch  
Assistant Regional Counsel  
Office of Regional Counsel

Address of Target Housing	Year Built	Children (ages)	Date of Contract	Date Work Performed	Deviations/Deficiencies
3219 Lafayette Avenue, St. Louis, MO 63132	1900	None	Unknown	9/2/2015	Failure to comply with Subpart E—Residential Property Renovation

Violation	Extent	Circumstance	Gravity Based Penalty
1. 40 C. F. R. §§ 745. 81(a)(2)(ii) & 745. 89(a)(1)—Failure to obtain initial firm certification from EPA.	Minor* *See ERPP, p. A-3, n. 49	Level 3a	4,500
2. 40 C. F. R. § 745. 84(a)(1)—Failure to provide property owner with the EPA-approved lead hazard information pamphlet.	Minor	Level 3a	2,840
3. 40 C. F. R. § 745. 89(d)(2)—Failure to assign a certified renovator.	Minor	Level 1b	4,500
4. 40 C. F. R. § 745. 85(a)(1)—Failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and makes sure they remain in place and readable until post-renovation cleaning verification have been completed.	Minor	Level 1b	2,840
5. 40 C. F. R. § 745. 85(a)(2)(i)(B)—Failure to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.	Minor	Level 2a	6,000
6. 40 C. F. R. § 745. 85(a)(2)(i)(D)—Failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.	Minor	Level 2a	6,000
7. 40 C. F. R. § 745. 85(a)(2)(ii)(A)—Failure to close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.	Minor	Level 2a	6,000

	Violation	Extent	Circumstance	Gravity Based Penalty
8.	40 C. F. R. § 745. 85(a)(2)(ii)(B)—Failure to ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.	Minor	Level 2a	6,000
9.	40 C. F. R. § 745. 85(a)(4)(i)—Failure to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal and/or failure to cover chute if it is used to remove waste from the work area.	Minor	Level 2a	6,000
	<b>TOTAL</b>			<b>\$44,680</b>

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing were hand-delivered to the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, on January 23, 2017.

A true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, together with a copy of 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, and the EPA's "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" were sent by certified mail, return receipt requested, on January 23, 2017 to:

Kelly Mullins  
President  
America's Choice Construction Inc.  
1515 N. Warson Road, Suite 262  
St. Louis, Missouri 63132.



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Raymond C. Bosch  
Assistant Regional Counsel  
Office of Regional Counsel





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

**JAN 23 2017**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Article No.: 7014 1200 0000 6126 4479

Kelly Mullins  
President  
America's Choice Construction Inc.  
1515 N Warson Road, Suite 262  
St. Louis, Missouri 63132

Re: In the matter of America's Choice Construction Inc.  
Docket No. TSCA-07-2016-0039  
EPA ID # 3600083632

Dear Mr. Mullins:

On March 7, 2016, the U.S. Environmental Protection Agency, Region 7, sent you a pre-filing letter inviting you to participate in negotiations regarding a proposed administrative penalty action for violations of the Toxics Substance Control Act that occurred during the renovation of residential housing located at 3219 Lafayette Avenue, St. Louis, MO 63104. The EPA conducted an on-site inspection of your work site at this location on September 2, 2015.

You have been unresponsive to the agency's attempts to contact you by telephone, mail, and email.

The EPA has, therefore, filed the enclosed Complaint and Notice of Opportunity for Hearing seeking assessment of a civil penalty for the TSCA violations alleged therein. Although the EPA has filed this Complaint you still have the opportunity to negotiate settlement of the alleged violations.

Your prompt attention to this matter is imperative. If you have any questions regarding the enclosed Complaint or your options in settlement, please contact me at (913) 551-7501.

Sincerely,

A handwritten signature in blue ink that reads "Raymond C. Bosch".

Raymond C. Bosch  
Assistant Regional Counsel

Enclosures



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