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****FILED****
16 JULY 2021
U.S. EPA - REGION IX

7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the matter of:) Docket No. TSCA-09-2021-0055
12)
13 MIK Construction, Inc.,)
14 Respondent.)
15)
16)
17)

CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

18 I. CONSENT AGREEMENT

19 The United States Environmental Protection Agency, Region IX (“EPA”), and MIK
20 Construction, Inc. (the “Respondent”) agree to settle this matter and consent to the entry of this
21 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

22 A. AUTHORITY AND PARTIES

23 I. This is a civil administrative penalty action brought against Respondent pursuant to
24 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
25 of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Section 402 of TSCA, 15
26 U.S.C. § 2682, and its implementing federal regulations promulgated at 40 C.F.R. Part 745,
27 Subpart E.
28

1 8. "Renovation" means the modification of any existing structure, or portion thereof, that
2 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
3 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the
4 removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of
5 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
6 scraping, or other such activities that may generate paint dust); the removal of building
7 components (*e.g.*, walls, ceilings, plumbing windows); weatherization projects (*e.g.*, cutting
8 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
9 thresholds to install weatherstripping), and interim controls that disturb painted surfaces
10 The term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. §
11 745.83.

12 9. "Painted surface" means a component surface covered in whole or in part with paint or
13 other surface coatings. 40 C.F.R. § 745.83.

14 10. "Component or building component" means specific design or structural elements or
15 fixtures of a building or residential dwelling that are distinguished from each other by form,
16 function, and location. These include, but are not limited to interior components such as . . .
17 windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and
18 exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40
19 C.F.R. § 745.83.

20 11. "Renovator" means any individual who either performs or directs workers who
21 perform renovations. A certified renovator is a renovator who has successfully completed a
22 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
23 745.83.

24 12. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
25 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
26 Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to
27 exceed \$41,056 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
28 occurred after November 2, 2015 where penalties were assessed on or after December 23, 2020.

1 C. ALLEGED VIOLATIONS

2 13. Respondent is a “person,” as that term is defined at 40 C.F.R. § 745.83.

3 14. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined
4 at 40 C.F.R. § 745.83.

5 15. In or around Summer 2019, Respondent performed “renovations,” as that term is
6 defined at 40 C.F.R. § 745.83, for compensation at the kindergarten portion of the public
7 building located at the Taper Avenue Elementary School in San Pedro, California (the
8 “Property”).

9 16. At all times relevant to this CAFO, the Property was a “child-occupied facility,” as
10 that term is defined at 40 C.F.R. § 745.83.

11 17. Firms that perform renovations for compensation must apply to EPA for certification
12 to perform renovations. 40 C.F.R. § 745.89(a).

13 18. On or after April 22, 2010, no firm may perform a renovation without certification
14 from EPA under 40 C.F.R. § 745.89(a) in target housing or child-occupied facilities unless the
15 renovation is performed in target housing or child-occupied facilities that have been determined
16 to be lead-free pursuant to 40 C.F.R. § 745.82(a). 40 C.F.R. § 745.81(a)(2)(ii).

17 19. At all times relevant to this CAFO, Respondent did not have a certification from
18 EPA to perform renovations for compensation at the Property.

19 20. At all times relevant to this CAFO, the Property had not been determined to be lead-
20 free pursuant to 40 C.F.R. § 745.82(a) before the renovations for compensation occurred.

21 21. Respondent’s performance of renovations for compensation at the Property without
22 certification from EPA under 40 C.F.R. § 745.89(a) constitutes one violation of 40 C.F.R. §
23 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

24 22. Firms performing renovations must retain documentation of compliance with the
25 requirements of § 745.85, including documentation that: a certified renovator was assigned to
26 the project; a certified renovator provided on-the-job training for workers used on the project; a
27 certified renovator performed or directed workers who performed all of the work practice tasks
28 described in § 745.85(a); and a certified renovator performed the post-renovation cleaning

1 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

2 23. Respondent did not retain documentation for the renovations performed at the
3 Property that: a certified renovator was assigned to the project; a certified renovator provided
4 on-the-job training for workers used on the project; a certified renovator performed or directed
5 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
6 renovator performed the post-renovation cleaning verification described in § 745.85(b).

7 24. Respondent's failure to retain documentation for the renovations performed at the
8 Property that: a certified renovator was assigned to the project; a certified renovator provided
9 on-the-job training for workers used on the project; a certified renovator performed or directed
10 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
11 renovator performed the post-renovation cleaning verification described in § 745.85(b)
12 constitutes four violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. §
13 2689.

14 25. Firms performing renovations must ensure that a certified renovator is assigned to
15 each renovation performed by the firm and discharges all of the certified renovator
16 responsibilities identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

17 26. Respondent did not ensure that a certified renovator discharged all of the certified
18 renovator responsibilities identified in § 745.90 for the renovations performed at the Property.

19 27. Respondent's failure to ensure that a certified renovator discharged all of the certified
20 renovator responsibilities identified in § 745.90 for the renovations performed at the Property
21 constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

22 **D. RESPONDENT'S ADMISSIONS**

23 28. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
24 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
25 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
26 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
27 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
28 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the

1 proposed Final Order contained in this CAFO.

2 E. CIVIL ADMINISTRATIVE PENALTY

3 29. In full and final settlement of the violations specifically alleged in Section I.C of this
4 CAFO, Respondent shall pay a civil administrative penalty of SIXTEEN THOUSAND, EIGHT
5 HUNDRED, AND FOURTEEN DOLLARS (\$16,814). Respondent shall pay this civil penalty
6 within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by
7 remitting a certified or cashier's check, including the name and docket number of this case, for
8 the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
9 methods listed below) and sent as follows:

10 Regular Mail:

11 U.S. Environmental Protection Agency
12 Fines and Penalties
13 Cincinnati Finance Center
14 PO Box 979077
15 St. Louis, MO 63197-9000

16 Wire Transfers:

17 Wire transfers must be sent directly to the Federal Reserve Bank in New
18 York City with the following information:
19 Federal Reserve Bank of New York
20 ABA = 021030004
21 Account = 68010727
22 SWIFT address = FRNYUS33
23 33 Liberty Street
24 New York, NY 10045
25 Beneficiary = U.S. Environmental Protection Agency

26 Certified or Overnight Mail:

27 U.S. Bank
28 1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through
the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

1 Physical location of U.S. Treasury facility:

2 5700 Rivertech Court
3 Riverdale, MD 20737

4 Remittance Express (REX) = (866) 234-5681

5 Online Payment:

6 This payment option can be accessed from the information below:

7 www.pay.gov
8 Enter "SFO 1.1" in the search field
9 Open form and complete required fields

10 If clarification regarding a particular method of payment remittance is
11 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

12 A copy of each check, or notification that the payment has been made by one of the other
13 methods listed above, including proof of the date payment was made, shall be sent with a
14 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
15 following regular mail or email addresses:

16 Regional Hearing Clerk
17 Office of Regional Counsel (ORC-1)
18 U.S. Environmental Protection Agency, Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105
21 R9HearingClerk@epa.gov

22 Christopher Rollins
23 Hazardous Waste & Chemicals Section
24 Enforcement and Compliance Assurance Division (ENF-2-2)
25 U.S. Environmental Protection Agency, Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105
28 rollins.christopher@epa.gov

30. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
use such payment as a tax deduction.

31. If Respondent fails to pay the assessed civil administrative penalty of SIXTEEN
THOUSAND, EIGHT HUNDRED, AND FOURTEEN DOLLARS (\$16,814), as identified in
Paragraph 29, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated

1 penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed
2 penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued
3 stipulated penalties are paid and shall become due and payable upon EPA's written request.
4 Failure to pay the civil administrative penalty specified in Paragraph 29 by the deadline specified
5 in that Paragraph may also lead to any or all of the following actions:

6 (1) EPA may refer the debt to a credit reporting agency, a collection
7 agency, or to the Department of Justice for filing of a collection action in the appropriate United
8 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
9 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
10 collection proceeding.

11 (2) The U.S. Government may collect the debt by administrative offset
12 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
13 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
14 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
15 C.F.R. §§ 13(C) and 13(H).

16 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
17 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
18 business with EPA or engaging in programs EPA sponsors or funds.

19 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
20 Government may assess interest, administrative handling charges, and nonpayment penalties
21 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
22 civil administrative penalty specified in Paragraph 29 by the deadline specified in that Paragraph.

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
24 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
27 (30) days of the effective date of this CAFO.

28 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.

1 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
2 based on either actual or average cost incurred (including both direct and indirect costs), for
3 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

4 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
5 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
6 may be assessed on all debts more than ninety (90) days delinquent.

7 F. CERTIFICATION OF COMPLIANCE

8 32. In executing this CAFO, Respondent certifies that it is now fully in compliance with
9 the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

10 G. RETENTION OF RIGHTS

11 33. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
12 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
13 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
14 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
15 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
16 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
17 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
18 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

19 34. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
20 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
21 and permits.

22 H. ATTORNEYS' FEES AND COSTS

23 35. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
24 this proceeding.

25 I. EFFECTIVE DATE

26 36. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
27 effective on the date that the Final Order contained in this CAFO, having been approved and
28 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

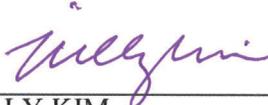
J. BINDING EFFECT

37. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

38. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT MIK CONSTRUCTION, INC.:

7/7/2021
DATE



BILLY KIM
President/CEO
MIK Construction, Inc.

FOR COMPLAINANT EPA:

7/13/2021
DATE

MATTHEW SALAZAR

MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

Digitally signed by MATTHEW SALAZAR
Date: 2021.07.13 16:07:42 -07'00'

1 II. FINAL ORDER

2 EPA and MIK Construction, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2021-0055) be)
4 entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTEEN
5 THOUSAND, EIGHT HUNDRED, AND FOURTEEN DOLLARS (\$16,814) and comply with
6 the terms and conditions set forth in the Consent Agreement.

7 **STEVEN**
8 **JAWGIEL**

Digitally signed by STEVEN
JAWGIEL
Date: 2021.07.15 08:18:27 -07'00'

9 _____
10 DATE

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order in the matter of MIK Construction, Inc. (TSCA-09-2021-0055) was filed with the Regional Hearing Clerk, EPA, Region 09, and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT:

VIA E-MAIL

Billy Kim
President/CEO
MIK Construction, Inc.
8022 Westman Avenue
Whittier, CA 90606
billykim@mikinc.us

FOR COMPLAINANT:

VIA E-MAIL

Edgar Coral
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
coral.edgar@epa.gov

Armsey
Steven
Digitally signed by
Armsey, Steven
Date: 2021.07.16
18:52:47 -07'00'

Regional Hearing Clerk
U.S. EPA, Region IX

Date