

1 SYLVIA A. QUAST
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6 coral.edgar@epa.gov

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U.S. EPA - REGION IX

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8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

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11 In the Matter of:) Docket No. TSCA-09-2021-0068
12)
MCEC, Inc.,) COMPLAINT AND NOTICE OF
13) OPPORTUNITY FOR HEARING
14 Respondent.)
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16 I. AUTHORITY AND PARTIES

17 1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic
18 Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a). Section 16(a) of TSCA authorizes the
19 Administrator of the United States Environmental Protection Agency (“EPA”) to issue a civil
20 complaint for each violation of Section 409 of TSCA, 15 U.S.C. § 2689.

21 2. Complainant is the Manager of the Toxics Section in the Enforcement and
22 Compliance Assurance Division, EPA, Region IX, who has been duly delegated the authority to
23 bring this action. Respondent is MCEC, Inc., a California corporation with headquarter offices
24 located at 900 West 10th Street in Azusa, California, that performed renovations at a public
25 elementary school property located in Los Angeles, California.

26 3. This Complaint and Notice of Opportunity for Hearing (“Complaint”) serves as notice
27 that Complainant has reason to believe that Respondent violated Section 409 of TSCA by failing
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1 to comply with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and their
2 implementing federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

3 II. GENERAL ALLEGATIONS

4 4. EPA has jurisdiction over this matter pursuant to Section 16(a) of TSCA, 15 U.S.C.
5 § 2615(a).

6 5. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745,
7 Subpart E requires a person who performs for compensation a renovation of target housing and
8 child-occupied facilities to provide a lead hazard information pamphlet to the owners and
9 occupants (as well as the parents of children under the age of six in child-occupied facilities)
10 before beginning the renovation.

11 6. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.
12 Part 745, Subpart E provides requirements for certification of individuals and firms engaged in
13 lead-based paint activities and work practice standards for renovation, repair, and painting
14 activities in target housing and child-occupied facilities.

15 7. “Child-occupied facility” means a building, or portion of a building, constructed prior
16 to 1978, visited regularly by the same child, under six years of age, on at least two different days
17 within any week (Sunday through Saturday period), provided that each day’s visit lasts at least
18 three hours and the combined weekly visits last at least six hours, and the combined annual visits
19 last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care
20 centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in
21 target housing or in public or commercial buildings. With respect to common areas in public or
22 commercial buildings that contain child-occupied facilities, the child-occupied facility
23 encompasses only those common areas that are routinely used by children under age six, such as
24 restrooms and cafeterias.

25 8. “Person” means any natural or judicial person including any individual, corporation,
26 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
27 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. §
28 745.83.

1 9. “Firm” means a company, partnership, corporation, sole proprietorship or individual
2 doing business, association, or other business entity; a Federal, State, Tribal, or local government
3 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

4 10. “Renovation” means the modification of any existing structure, or portion thereof,
5 that results in the disturbance of painted surfaces, unless that activity is part of an abatement as
6 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the
7 removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of
8 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
9 scraping, or other such activities that may generate paint dust)); the removal of building
10 components (*e.g.*, walls, ceilings, plumbing, windows); weatherization projects (*e.g.*, cutting
11 holes in painted surfaces to install blown-in insulation or to gain access to attics, planning
12 thresholds to install weatherstripping), and interim controls that disturb painted surfaces
13 The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. §
14 745.83.

15 11. “Painted surface” means a component surface covered in whole or in part with paint
16 or other surface coatings. 40 C.F.R. § 745.83.

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

23 13. “Renovator” means any individual who either performs or directs workers who
24 perform renovations. A certified renovator is a renovator who has successfully completed a
25 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
26 745.83.

27 14. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead
28 Hazard Information for Families, Child Care Providers and Schools,” developed under Section

1 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal
2 pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same
3 purpose. 40 C.F.R. § 745.83.

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

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

7 17. In 2018, Respondent performed “renovations,” as that term is defined at 40 C.F.R. §
8 745.83, for compensation at the kindergarten restroom portion of the public building located at
9 the Wilshire Crest Elementary School in Los Angeles, California (the “Property”).

10 18. The kindergarten restroom portion of the Property was constructed in 1975.

11 19. At all times relevant to this Complaint, the Property was a “child-occupied facility,”
12 as that term is defined at 40 C.F.R. § 745.83.

13 III. ALLEGED VIOLATIONS

14 COUNT 1: Failure to comply with 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)

15 20. Paragraphs 4 through 19 above are hereby alleged and incorporated by reference as if
16 set forth herein in full.

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

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

23 23. At all times relevant to this Complaint, Respondent did not have a certification from
24 EPA to perform renovations for compensation at the Property.

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

27 25. Respondent’s performance of renovations for compensation at the Property without
28 certification from EPA under 40 C.F.R. § 745.89(a) constitutes one violation of 40 C.F.R. §

1 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

2 COUNT 2: Failure to comply with 40 C.F.R. § 745.84(c)(1)

3 26. Paragraphs 4 through 19 above are hereby alleged and incorporated by reference as if
4 set forth herein in full.

5 27. No more than 60 days before beginning renovation activities in any child-occupied
6 facility, the firm performing the renovation must provide the owner of the building with the
7 “pamphlet,” as that term is defined at 40 C.F.R. § 748.83, and either obtain from the owner a
8 written acknowledgment that the owner has received the “pamphlet” or obtain a certificate of
9 mailing at least seven days prior to the renovation. 40 C.F.R. § 745.84(c)(1).

10 28. Respondent did not either obtain from the owner a written acknowledgment that the
11 owner has received the “pamphlet” or obtain a certificate of mailing at least seven days prior to
12 the renovations at the Property.

13 29. Respondent’s failure to either obtain from the owner a written acknowledgment that
14 the owner has received the “pamphlet” or obtain a certificate of mailing at least seven days prior
15 to the renovations at the Property constitutes one violation of 40 C.F.R. § 745.84(c)(1) and
16 Section 409 of TSCA, 15 U.S.C. § 2689.

17 COUNTS 3-6: Failure to comply with 40 C.F.R. § 745.86(b)(6)

18 30. Paragraphs 4 through 19 above are hereby alleged and incorporated by reference as if
19 set forth herein in full.

20 31. Firms performing renovations must retain documentation of compliance with the
21 requirements of § 745.85, including documentation that: a certified renovator was assigned to
22 the project; a certified renovator provided on-the-job training for workers used on the project; a
23 certified renovator performed or directed workers who performed all of the work practice tasks
24 described in § 745.85(a); and a certified renovator performed the post-renovation cleaning
25 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

26 32. Respondent did not retain documentation for the renovations performed at the
27 Property that: a certified renovator was assigned to the project; a certified renovator provided
28 on-the-job training for workers used on the project; a certified renovator performed or directed

1 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
2 renovator performed the post-renovation cleaning verification described in § 745.85(b).

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

9 COUNT 7: Failure to comply with 40 C.F.R. § 745.89(d)(2)

10 34. Paragraphs 4 through 19 above are hereby alleged and incorporated by reference as if
11 set forth herein in full.

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

15 36. Respondent did not ensure that a certified renovator discharged all of the certified
16 renovator responsibilities identified in § 745.90 for the renovations performed at the Property.

17 37. Respondent's failure to 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 constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

20 IV. PROPOSED CIVIL PENALTY

21 Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes civil penalties of not more than
22 \$41,056 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, occurring after November
23 2, 2015, where penalties are assessed on or after December 23, 2020 pursuant to the Civil
24 Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal
25 Civil Penalties Inflation Adjustment Acts of 1990 and 2015, Pub. L. 101-410.

26 In assessing any civil penalty, Section 16(a) of TSCA requires that EPA take into account
27 the nature, circumstances, extent, and gravity of the violations; Respondent's history of such
28 violations of TSCA; the degree of culpability involved; Respondent's ability to pay a penalty

1 without jeopardizing their ability to continue to do business; and such other factors as justice may
2 require. Accordingly, Complainant requests that after consideration of these statutory assessment
3 factors, the Administrator assess Respondent a civil administrative penalty of up to \$41,056 for
4 each of the violations of TSCA set forth above.

5 **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

6 As provided in Section 16(a) of TSCA, 15 U.S.C. 2615(a), you have the right to request a
7 formal hearing to contest any material fact set forth in this Complaint or to contest the
8 appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance
9 with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of
10 Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or
11 Suspension of Permits (the “Consolidated Rules of Practice”), 40 C.F.R. Part 22. A copy of the
12 Consolidated Rules of Practice is enclosed with this Complaint.

13 **You must file a written Answer within thirty (30) days of receiving this Complaint to**
14 **avoid being found in default, which constitutes an admission of all facts alleged in the**
15 **Complaint and a waiver of the right to a hearing, and to avoid having the above penalty**
16 **assessed without further proceedings.** If you choose to file an Answer, you are required by the
17 Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual
18 allegations contained in this Complaint to which you have any knowledge. If you have no
19 knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny
20 any of the allegations in this Complaint will constitute an admission of the undenied allegation.

21 The Answer shall also state the circumstances and arguments, if any, which are alleged to
22 constitute the grounds of defense, and shall specifically request an administrative hearing, if
23 desired. If you deny any material fact or raise any affirmative defense, you will be considered to
24 have requested a hearing.

25 The Answer must be filed with:

26 Regional Hearing Clerk
27 Office of Regional Counsel (ORC-1)
28 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 R9HearingClerk@epa.gov

2 In addition, please send a copy of the Answer and all other documents that you file in this action
3 to:

4 Edgar P. Coral
5 Office of Regional Counsel (ORC-2)
6 U.S. Environmental Protection Agency, Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105
9 coral.edgar@epa.gov

10 You are further informed that the Consolidated Rules of Practice prohibit any *ex parte*
11 (unilateral) discussion of the merits of any action with the Regional Administrator, Regional
12 Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the
13 decision of the case, after the Complaint is issued.

14 VI. INFORMAL SETTLEMENT CONFERENCE

15 EPA encourages all parties against whom a civil penalty is proposed to pursue the
16 possibility of settlement through informal conferences. Therefore, whether or not you request a
17 hearing, you may confer informally with EPA through Mr. Coral, the EPA attorney assigned to
18 this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility
19 of settlement. **An informal settlement conference does not, however, affect your obligation
20 to file an Answer to this Complaint.**

21 VII. ALTERNATIVE DISPUTE RESOLUTION

22 The parties also may engage in any process within the scope of the Alternative Dispute
23 Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts.
24 Dispute resolution using alternative means of dispute resolution does not divest the Presiding
25 Officer of jurisdiction nor does it automatically stay the proceeding.

26 VIII. CONSENT AGREEMENT AND FINAL ORDER

27 EPA has the authority, where appropriate, to modify the amount of the proposed penalty
28 to reflect any settlement reached with you in an informal conference or through alternative
dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement
and Final Order. A Consent Agreement signed by both parties would be binding as to all terms
and conditions specified therein when the Regional Judicial Officer signs the Final Order.

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Dated at San Francisco, California on this 2nd day of September, 2021.

MATTHEW SALAZAR Digitally signed by
MATTHEW SALAZAR
Date: 2021.09.02
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MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 CERTIFICATE OF SERVICE

2 *In re MCEC, Inc.*
3 EPA Docket No. TSCA-09-2021-0068

4 I certify that the foregoing Complaint and Notice of Opportunity for Hearing was filed via email
5 with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, at
6 R9HearingClerk@epa.gov and that a true and correct copy of (1) the Complaint and Notice of
7 Opportunity for Hearing; (2) the Consolidated Rules of Practice at 40 C.F.R. Part 22; and (3) the
8 Region 9 Regional Judicial Officer's Standing Order dated May 14, 2020, was sent via United
9 Parcel Service's Signature Service, with written verification of delivery requested, to:

10
11 Maurice Maalouf
12 President
13 MCEC, Inc.
14 900 West 10th Street
15 Azusa, California 91702
16 mauricemaalouf@sbcglobal.net

17 Tracking No.: 1ZA46W472495078776

18 Dated: September 2, 2021

19 By: **CHRISTOPHE**
R ROLLINS
20 U.S. Environmental Protection Agency, Region IX
21 Digitally signed by
CHRISTOPHER ROLLINS
Date: 2021.09.02 11:09:27
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