



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7017 2400 0000 3794 4918

Return Receipt Requested

Mr. Juan Guillen Ortiz
President
Mendez-Ortiz Construction, Inc.
3165 California Street
San Francisco, CA 94115

AUG 28 2019

Re: Consent Agreement and Final Order
In the Matter of Mendez-Ortiz Construction, Inc.

Dear Mr. Ortiz:

Please find enclosed the final executed Consent Agreement and Final Order ("CAFO") negotiated between the United States Environmental Protection Agency, Region 9 ("EPA") and Mendez-Ortiz Construction, Incorporated (MOC, Inc).

This CAFO sets out the terms for resolution of the Toxic Substances Control Act ("TSCA") administrative civil penalty action against MOC, Inc for its alleged failure to adhere to the Renovation, Repair and Painting Rule and Pre-Renovation Education Rule when work was performed at four multi-family homes located in San Francisco and Oakland, California.

MOC, Inc's full compliance with the payment terms of this CAFO and completion of all tasks in accordance with the terms of this CAFO will close this case. If you have any questions regarding the alleged TSCA violations or the rules which govern the proceedings terminated by the enclosed document, please contact Carol Bussey (Assistant Regional Counsel), in EPA's Office of Regional Counsel at (415) 972-3950.

Sincerely,

A handwritten signature in black ink, appearing to read "D. McDaniel".

Douglas K. McDaniel
Chief, Toxics Section
Enforcement and Compliance Assurance Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

**** FILED ****

28AUG2019 - 11:05AM
U.S.EPA - Region 09

In the Matter of:)
)
) Docket No. TSCA-09-2019- 0069
Mendez-Ortiz Construction, Inc.,)
)
) CONSENT AGREEMENT
)
) AND FINAL ORDER
)
) PURSUANT TO 40 C.F.R.
)
) §§ 22.13 and 22.18
Respondent.)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Mendez-Ortiz Construction, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously initiates and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action initiated against Respondent pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing regulations promulgated at 40 C.F.R. Part 745, Subpart E.

2. Complainant is the Chief of the Toxics Section in the Enforcement and Compliance Assurance Division, EPA Region IX, who has

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been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

3. Respondent is a California corporation doing business at 3165 California Street in San Francisco, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745, Subpart E requires that a person who performs for compensation a renovation of target housing or a child-occupied facility provide a lead hazard information pamphlet to the owner and occupant before beginning the renovation.

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

6. "Target housing" means 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 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. § 2681.

7. "Person" means 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

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department, agency, or instrumentality of the Federal Government. 40 C.F.R. § 745.83.

8. "Firm" means 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. 40 C.F.R. § 745.83.

9. "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is 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 planning thresholds to install weatherstripping), and interim controls that disturb painted surfaces...The term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

10. "Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or

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less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. 40 C.F.R. § 745.83.

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

12. "Component or building component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to interior components such as ceilings, crown molding, walls...doors, door trims, floors...windows and trim (including sashes, window heads, jambs, sills or stools and troughs)...and exterior components such as...painted roofing, chimneys, flashing...ceilings...fascia...siding...windowsills or stools and troughs, casings, sashes and wells. 40 C.F.R. § 745.83.

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

14. "Pamphlet" means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved

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by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. 40 C.F.R. § 745.83.

15. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Acts of 1990 and 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed \$39,873 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred after November 2, 2015 and assessed after January 15, 2019.

C. ALLEGATIONS

16. Respondent is a "person," as that term is defined at 40 C.F.R. § 745.83.

17. At all times relevant to this CAFO, Respondent was a "firm," as that term is defined at 40 C.F.R. § 745.83.

18. In 2017 and 2018, Respondent performed "renovations," as that term is defined at 40 C.F.R. § 745.83, for compensation at residential properties located at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California.

19. At all times relevant to this CAFO, the residential properties located at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California were "target housing," as that term is defined at Section 401 of TSCA, 15 U.S.C. § 2681.

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

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

22. Respondent did not have a certification from EPA to perform renovations for compensation when it performed the renovations for compensation at target housing located at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California.

23. At all times relevant to this CAFO, the target housing located at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California had not been determined to be lead-free pursuant to 40 C.F.R. § 745.82(a) before the renovations for compensation occurred.

24. Respondent's performance of renovations for compensation at target housing located at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California without certification from EPA under 40 C.F.R. § 745.89(a) constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

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25. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the "pamphlet," as that term is defined at 40 C.F.R. § 748.83, and either obtain from the owner a written acknowledgment that the owner has received the "pamphlet" or obtain a certificate of mailing at least 7 days prior to the renovation. 40 C.F.R. § 745.84(a)(1).

26. Respondent did not provide the owners with the "pamphlet" before beginning renovation activities at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California.

27. Respondent's failures to provide the owners with the "pamphlet" before beginning renovation activities at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California constitute four (4) violations of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

28. Firms must 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. 40 C.F.R. § 745.85(a)(1).

29. Respondent did not 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 for the renovations that

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it performed at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California.

30. Respondent's failures 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 for the renovations that it performed at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California constitute four (4) violations of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

31. Before beginning a renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. 40 C.F.R. § 745.85(a)(2).

32. Respondent did not isolate the work area at 171 Montecito Avenue in Oakland, California so that no dust or debris could leave the work area while it performed the renovation at the property.

33. Respondent's failure to isolate the work area so that no dust or debris could leave the work area while it performed the renovation at 171 Montecito Avenue in Oakland, California constitutes a violation of 40 C.F.R. § 745.85(a)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

34. Firms performing renovations must retain documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project; that a certified renovator provided on-the-job training for workers used on

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the project; that the certified renovator performed or directed workers who performed all of the work practice tasks described in § 745.85(a); and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

35. Respondent did not retain documentation that a certified renovator was assigned to the project; that a certified renovator provided on-the-job training for workers used; that a certified renovator performed or directed workers who performed all of the work practice tasks described in § 745.85(a); and that a certified renovator performed the post-renovation cleaning verification described in § 745.85(b) for the renovations performed at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland.

36. Respondent's failures to retain documentation that a certified renovator was assigned to the project; that a certified renovator provided on-the-job training for workers used; that a certified renovator performed or directed workers who performed all of the work practice tasks described in § 745.85(a); and that a certified renovator performed the post-renovation cleaning verification described in § 745.85(b) for the renovations performed at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland constitute sixteen (16) violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

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

38. Respondent did not have a certified renovator assigned who discharged all the certified renovator responsibilities identified in § 745.90 for the renovations performed at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland.

39. Respondent's failure to ensure that a certified renovator was assigned and discharged all the certified renovator responsibilities identified in § 745.90 for the renovation performed at 1200 Valencia Street, 745 Hyde Street and 795 Geary Street in San Francisco, California and 171 Montecito Avenue in Oakland, California constitutes four (4) violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

D. RESPONDENT'S ADMISSIONS

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

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right to contest the allegations contained in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

41. Respondent agrees to the assessment of a penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) as final settlement of the civil claims against Respondent arising under TSCA as alleged in Section I.C of this CAFO.

42. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective date of the CAFO. The assessed penalty shall be paid by **certified or cashier's check**, payable to Treasurer, United States of America, or paid by one of the other methods listed below and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

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Overnight Mail:

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

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo 1.1" in the search field
Open form and complete required fields

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

Concurrently, a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number to:

- a) Regional Hearing Clerk (ORC-1)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
- b) Christopher Rollins
Toxics Section (ENF-4-1)

In the Matter of
Mendez-Ortiz Construction, Inc.

Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

43. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

44. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 41 by the deadline specified in Paragraph 42, then Respondent shall pay to EPA a stipulated penalty of \$500 per day in addition to the assessed penalty. Stipulated penalties shall accrue until the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon written request by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 42 may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person

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to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 42. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on

either actual or average cost incurred and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RESPONDENT'S CERTIFICATION

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

G. RETENTION OF RIGHTS

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

any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

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

J. BINDING EFFECT

50. 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.

51. 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.

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In the Matter of
Mendez-Ortiz Construction, Inc.

FOR RESPONDENT, MENDEZ-ORTIZ CONSTRUCTION, INC.

7/31/19
DATE

Juan Ortiz
Juan Guillen Ortiz
President
MENDEZ-ORTIZ CONSTRUCTION, INC.

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

8/27/19
DATE

D. McDaniel
Douglas K. McDaniel
Chief, Toxics Section
Enforcement and Compliance Assurance Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX

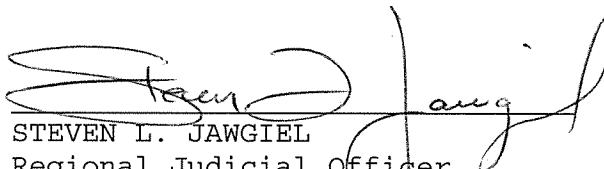
In the Matter of
Mendez-Ortiz Construction, Inc.

II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-~~0069~~) be entered, and that Respondent shall pay a civil administrative penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

08/28/19
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region IX

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Mendez-Ortiz Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (In the Matter of: Big Red Construction, TSCA-09-2019-0069) has been filed with the Regional Hearing Clerk for U.S. EPA, Region 9, and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

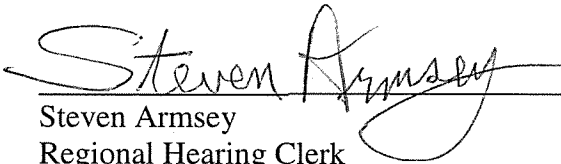
Mr. Juan Guillen Ortiz
President
Mendez-Ortiz Construction, Inc.
3165 California Street
San Francisco, CA 94115

Certified Mail No.: 7017 2400 0000 3794 4918

and Hand-Delivered to:

Carol Bussey
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Date: Aug. 28, 2019


Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 9