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

10

11 IN THE MATTER OF:) Docket No. CAA-09-2011-0007
12 J.A. Sutherland, Inc.)
and Walberg, Inc.,) CONSENT AGREEMENT
13 Respondents.) AND FINAL ORDER

14

15 I. CONSENT AGREEMENT

16 Complainant, the Director of the Air Division, United States
17 Environmental Protection Agency, Region IX, ("EPA") and
18 Respondents, J.A. Sutherland, Inc. and Walberg, Inc., seek to
19 settle this case initiated against Respondents under the Clean
20 Air Act ("CAA"), as amended, 42 U.S.C. §§7401-7671q, and consent
21 to the entry of this Consent Agreement and Final Order ("CAFO").
22

23 A. AUTHORITY

24 1. EPA initiated this civil administrative proceeding for
25 the assessment of a civil penalty under the CAA pursuant to
26 Section 113(d) of the CAA, 42 U.S.C. § 7413(d), by issuing a
27 Complaint and Notice of Opportunity for Hearing ("Complaint")
28 against Respondents on September 29, 2011, in accordance with the

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6/26/12

1 Consolidated Rules of Practice Governing the Administrative
2 Assessment of Civil Penalties and the Revocation/Termination or
3 Suspension of Permits at 40 C.F.R. Part 22.

4 2. The Complaint alleges that Respondents violated the CAA
5 and implementing regulations known as the National Emission
6 Standards for Hazardous Air Pollutants for asbestos at 40 C.F.R.
7 Part 61, Subpart M by failing to provide EPA with a written
8 notification of intention to demolish before demolition began.

9 3. EPA and Respondents have agreed to resolve this civil
10 administrative proceeding by executing this CAFO pursuant to 40
11 C.F.R. § 22.18(b).

12 B. RESPONDENTS' ADMISSIONS

13 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
14 purpose of this proceeding, Respondents (i) admit that EPA has
15 jurisdiction over the subject matter of this CAFO and over
16 Respondents; (ii) admit that: (1) Respondents, J.A. Sutherland,
17 Inc. and Walberg, Inc., are each a corporation doing business in
18 the State of California; (2) in June 2011, Respondent J.A.
19 Sutherland, Inc. owned the building located at 1301 West Wood
20 Street in Willows, California, which it operated as a Taco Bell
21 fast-food restaurant ("Taco Bell building"); (3) Respondent J.A.
22 Sutherland, Inc. hired Respondent Walberg, Inc. to demolish the
23 Taco Bell building located at 1301 West Wood Street in Willows,
24 California; (4) on June 9, 2011, Respondent Walberg, Inc.
25 demolished most of the Taco Bell building and completed the
26 demolition on June 10, 2011; and (5) neither Respondent J.A.

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1 Sutherland, Inc. nor Respondent Walberg, Inc. provided written
2 notice of intention to demolish the Taco Bell building to EPA
3 before the demolition began; (iii) consent to any and all
4 conditions specified in this CAFO and to the assessment of the
5 civil administrative penalty under Section C of this CAFO;
6 (iv) waive any right to contest the allegations contained in the
7 Complaint; and (v) waive the right to appeal the proposed final
8 order contained in this CAFO.

9 C. CIVIL ADMINISTRATIVE PENALTY

10 5. Respondents agree to the assessment of a penalty in the
11 amount of NINE THOUSAND, NINE HUNDRED AND FORTY DOLLARS (\$9,940)
12 as final settlement of the civil claims against Respondents
13 arising under the CAA, as alleged in the Complaint.

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

19 Regular Mail:
20 U.S. Environmental Protection Agency
21 Fines and Penalties
22 Cincinnati Finance Center
23 PO Box 979077
24 St. Louis, MO 63197-9000

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

28 Federal Reserve Bank of New York
ABA = 021030004

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Inc. and Walberg, Inc.,
Docket No. CAA-09-2011-0007

1 Account = 68010727
SWIFT address = FRNYUS33
2 33 Liberty Street
New York, NY 10045
3 Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

4 Overnight Mail:

5 U.S. Bank
6 1005 Convention Plaza
Mail Station SL-MO-C2GL
7 ATTN Box 979077
St. Louis, MO 63101

8 ACH (also known as REX or remittance express):

9 Automated Clearinghouse (ACH) for receiving US currency
10 PNC Bank
808 17th Street, NW
11 Washington, DC 20074
ABA = 051036706
12 Transaction Code 22 - checking
Environmental Protection Agency
13 Account 31006
CTX Format

14 On Line Payment:

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

16 www.pay.gov
17 Enter "sf01.1" in the search field
Open form and complete required fields

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

20 In addition, a copy of each check or notification that the
21 payment has been made by one of the other methods listed above,
22 including proof of the date payment was made, shall be sent with
23 a transmittal letter indicating Respondents' names, the case
24 title, and the docket number to:

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Inc. and Walberg, Inc.,
28 Docket No. CAA-09-2011-0007

- 1 a) Regional Hearing Clerk (ORC-1)
2 Office of Regional Counsel
3 U.S. Environmental Protection Agency, Region 9
4 75 Hawthorne Street
5 San Francisco, California 94105
- 6 b) Chief, Air Enforcement Office (AIR-5)
7 Air Division
8 U.S. Environmental Protection Agency, Region 9
9 75 Hawthorne Street
10 San Francisco, California 94105
- 11 c) Carol Bussey
12 Assistant Regional Counsel (ORC-2)
13 U.S. Environmental Protection Agency, Region 9
14 75 Hawthorne Street
15 San Francisco, California 94105

16 7. Payment of the above civil administrative penalty shall
17 not be used by Respondents or any other person as a tax deduction
18 from Respondents' federal, state, or local taxes.

19 8. If Respondents fail to pay the assessed civil
20 administrative penalty specified in Paragraph 5 by the deadline
21 specified in Paragraph 6 of this CAFO, Respondents shall pay to
22 EPA the stipulated penalty of FOURTEEN THOUSAND, TWO HUNDRED
23 DOLLARS (\$14,200) rather than the assessed penalty of NINE
24 THOUSAND, NINE HUNDRED AND FORTY (\$9,940), which shall become due
25 and payable upon EPA's written request. Such failure by
26 Respondents may also subject Respondents to a civil action to
27 collect any unpaid portion of the assessed penalty, together with
28 interest, handling charges, and nonpayment penalties as set forth
in Paragraph 9 below. In any such collection action, the
validity, amount, and appropriateness of this CAFO or the penalty
assessed hereunder are not subject to review.

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1 9. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C.

2 § 3731, Respondent shall pay the following amounts:

3 a. Interest: Any unpaid portion of the assessed penalty
4 shall bear interest at the rate established pursuant to 26 U.S.C.
5 § 6621(a)(2) from the effective date of this CAFO, provided,
6 however, that no interest shall be payable on any portion of the
7 assessed penalty that is paid within thirty (30) days of the
8 effective date of this CAFO.

9 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a
10 monthly handling charge of \$15 shall be paid for any month in
11 which any portion of the assessed penalties is more than 30 days
12 past due.

13 c. Attorney Fees, Collection Costs, Nonpayment Penalty:
14 Pursuant to 42 U.S.C. § 7413(d)(5), if Respondents fail to pay on
15 a timely basis the full amount of the assessed penalty, interest,
16 and handling charges, they shall be liable for the United States'
17 enforcement and collection expenses, including, but not limited
18 to, attorney fees and costs incurred by the United States for
19 collection proceedings, and a quarterly nonpayment penalty for
20 each quarter during which such failure to pay persists. Such
21 nonpayment penalty shall be ten percent (10%) of the aggregate
22 amount of Respondents' outstanding or overdue penalties and
23 nonpayment penalties accrued from the beginning of such quarter.

24 D. RETENTION OF RIGHTS

25 10. In accordance with 40 C.F.R. § 22.18(c), this CAFO

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1 only resolves Respondents' liability for federal civil penalties
2 for the violation and facts specifically alleged in the
3 Complaint. Nothing in this CAFO is intended to or shall be
4 construed to resolve (i) any civil liability for violations of
5 any provision of any federal, state, or local law, statute,
6 regulation, rule, ordinance, or permit not specifically alleged
7 in the Complaint; or (ii) any criminal liability. EPA
8 specifically reserves any and all authorities, rights, and
9 remedies available to it (including, but not limited to,
10 injunctive or other equitable relief or criminal sanctions) to
11 address any violation of this CAFO or any violation not
12 specifically alleged in the Complaint.

13 11. This CAFO does not exempt, relieve, modify, or affect
14 in any way Respondents' duty to comply with all applicable
15 federal, state, and local laws, regulations, rules, ordinances,
16 and permits.

17 E. ATTORNEYS' FEES AND COSTS

18 12. Except as set forth in Paragraph 9(c) above, each party
19 shall bear its own costs, fees, and disbursements incurred in
20 this action.

21 F. EFFECTIVE DATE

22 13. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
23 22.31(b), this CAFO shall be effective on the date that the final
24 order contained in this CAFO, having been approved and issued by
25 either the Regional Judicial Officer or Regional Administrator,
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28 Inc. and Walberg, Inc.,
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1 is filed.

2 G. BINDING EFFECT

3 14. The undersigned representative of Complainant and the
4 undersigned representatives of Respondents each certifies that he
5 or she is fully authorized to enter into the terms and conditions
6 of this CAFO and to bind the party he or she represents to this
7 CAFO.

8 15. This Consent Agreement constitutes the entire agreement
9 between the parties resolving this matter arising under the CAA.

10 16. The provisions of this CAFO shall be binding on
11 Respondents and their officers, directors, employees, agents,
12 servants, authorized representatives, successors, and assigns.

13 17. This document constitutes an "enforcement response" as
14 that term is used in EPA's Penalty Policy for the purposes of
15 determining Respondents' "full compliance history" as provided in
16 Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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1 FOR RESPONDENT, J.A. SUTHERLAND, INC.

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3 Date: 6-14-12 By:

Janice A. Sutherland
Janica Sutherland
President
J.A. SUTHERLAND, INC.

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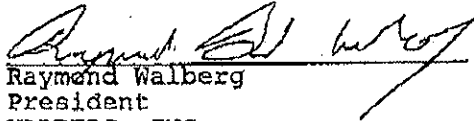
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FOR RESPONDENT, WALBERG, INC.

Date: 6-18-12 By: 
Raymond Walberg
President
WALBERG, INC.

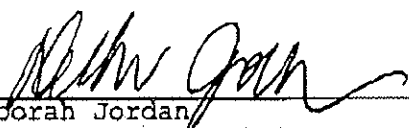
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FOR COMPLAINANT, EPA REGION IX

Date: 6/20/12

By:


Deborah Jordan
Director, Air Division
U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION IX

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II. FINAL ORDER

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

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2011-0007) be entered, and that Respondents shall pay a civil administrative penalty in the amount of NINE THOUSAND, NINE HUNDRED AND FORTY DOLLARS (\$9,940) and comply with the terms and conditions set forth in the Consent Agreement.

06/21/12
DATE


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