

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

FILED
2011 SEP 29 PM 1:3
U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the Matter of:)	Docket No. CAA-09-2011-0006
)	CONSENT AGREEMENT
Aka Bains, Inc.,)	and
Savidge Construction, Inc.,)	FINAL ORDER PURSUANT TO
and BK Bobcat,)	SECTIONS 22.13 AND 22.18
)	
Respondents.)	
_____)	

I. CONSENT AGREEMENT

Complainant, the Director of the Air Division, United States Environmental Protection Agency, Region IX, ("EPA") and Aka Bains, Inc. ("ABI"), Savidge Construction, Inc. ("Savidge"), and BK Bobcat ("BKB") (hereafter "**Respondents**") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("**CAFO**"), which simultaneously commences 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 instituted against Respondents pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7413(d), for violation of Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, and implementing federal regulations at 40 C.F.R. Part 61, Subpart M.

2. Complainant is the Director of the Air Division, EPA, Region IX, who has been duly delegated the authority to initiate this action and to sign a consent agreement settling this action

3. Respondents ABI and Savidge are corporations and Respondent BKB is a sole proprietorship doing business in the State of California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412 and 7414, the EPA Administrator promulgated regulations that govern the emission, handling, and disposal of asbestos and associated record-keeping and notification requirements, which are known as the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos and codified at 40 C.F.R. Part 61, Subpart M.

5. Section 302(e) of CAA, 42 U.S.C. § 7602(e), defines "person" as an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, and instrumentality of the United States and any officer, agent, or employee thereof.

6. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units). 40 C.F.R. § 61.141.

7. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility. 40 C.F.R. § 61.141.

8. "Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation, or both. 40 C.F.R. § 61.141.

9. An owner or operator of a demolition activity must provide EPA with a written notice of intention to demolish at least ten working days before demolition begins. 40 C.F.R. § 61.145(b)(1)(I).

10. In a facility being demolished, the notification requirements of § 61.145(b) apply even if there is no asbestos. 40 C.F.R. §§ 61.145(a)(1) and (2).

C. ALLEGATIONS

11. Each respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

12. At all times relevant to this CAFO, Respondent ABI owned, operated, controlled and/or supervised the AM/PM Arco Mini Mart located at 1139 Douglas Boulevard in Roseville, California (the “Building”).

13. Respondent ABI hired Respondent Savidge, which in turn hired Respondent BKB to demolish the Building.

14. Each respondent is “an owner or operator of a demolition activity” as defined at 40 C.F.R. §61.141.

15. The Building is a “facility” as defined at 40 C.F.R. §61.141.

16. In or around December 2010, Respondent BKB began and completed “demolition” of the Building, as that term is defined at 40 C.F.R. § 61.141.

17. On or about December 14, 2010, inspectors from the California Air Resources Board and EPA conducted an inspection at the Building site and verified that the Building had been demolished.

18. Respondents did not submit a written notice of their intention to demolish the Building to EPA before demolition began.

19. Respondents’ failure to submit a written notice of their intention to demolish the Building to EPA before demolition began constitutes a violation of 40 C.F.R. §61.145(b)(1)(i).

D. RESPONDENTS’ ADMISSIONS

20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,

Respondents (i) admit that EPA has jurisdiction over the subject matter of this CAFO and over Respondents; (ii) neither admit nor deny the specific factual allegations contained in Section I.C of this CAFO; (iii) consent to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section LE of this CAFO; (iv) waive any right to contest the allegations contained in Section I.C of this CAFO; and (v) waive the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

21. Respondents agree to the assessment of a penalty in the amount of NINE THOUSAND, NINE HUNDRED AND FORTY DOLLARS (\$9,940) as final settlement of the civil claims against Respondents arising under the Act, as alleged in Section I.C. of this CAFO.

22. Respondents shall pay the civil penalty amount required by Paragraph 21 within thirty (30) calendar days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check for the amount, payable to "Treasurer, United States of America," or be 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"

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):

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

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter “sf01.1” 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.

Payment by check shall be accompanied by a transmittal letter identifying the case name, docket number and this CAFO. Concurrently, Respondents shall send a copy of each check and transmittal letter or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, to both:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
- b) Chief, Air Enforcement Office (AIR-5)
Air Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

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

24. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondents shall pay the following amounts:

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

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

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

accrued from the beginning of such quarter.

25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondents' liability for federal civil penalties for the violation and facts specifically alleged in Section I.C. of this CAFO. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondents of their duty to comply with all applicable provisions of the Act, rules promulgated thereunder, and other federal, state or local laws, statutes, rules, ordinances or permits.

26. The provisions of this CAFO shall be binding on Respondents and on Respondents' officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

27. Except as set forth in Paragraph 24(c), each party shall bear its own costs, fees, and disbursements in this action.

28. For the purposes of state, local and federal income taxation, Respondents shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

29. This Consent Agreement constitutes the entire agreement between the Respondents and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondents arising from the facts alleged in Section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondents for the violation alleged in Section I.C. of this CAFO.

30. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this

CAFO shall be the date on which the accompanying Final Order, having been approved and issued by the Regional Judicial Officer, is filed.

31. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind the party that he or she represents to it.

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

FOR RESPONDENTS,
AKA BAINS, INC.:

Date: 9/8/11 By:

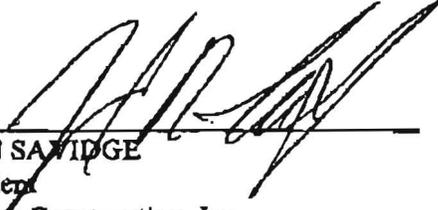


DALJIT BAINS
Chief Financial Officer
AKA Bains, Inc.

SAVIDGE CONSTRUCTION, INC.:

Date: 9-6-11

By:



JOHN SAVIDGE
President
Savidge Construction, Inc.

BK BOBCAT:

Date: 9-2-11 By: 
JOEL A. BECK
Owner
BK Bobcat

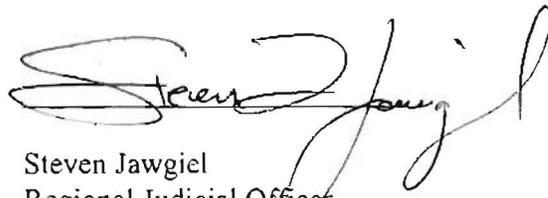
FOR COMPLAINANT, EPA REGION IX:

Date: 9/27/11 By: 
DEBORAH JORDAN
Director, Air Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondents shall comply with the terms set forth in the Consent Agreement and pay the civil penalty amount of **NINE THOUSAND, NINE HUNDRED AND FOURTY DOLLARS (\$9,940)** in accordance with the terms set forth in the Consent Agreement.

Date: 09/29/11


Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original copy of the foregoing Consent Agreement and Final Order for Aka Baynes, Inc., Savidge Construction, Inc., and BK BobcatUnion was filed with the Regional Hearing Clerk, Region IX and that a copy was sent by U.S. Certified Mail, Return Receipt Requested, to:

Daljit Baines
Chief Financial Officer
Aka Bains, Inc.
1139 Douglas Blvd
Roseville, CA 95678

Certified Mail No. 7010 1870 0001 5596 5739

Joel A. Beck
Owner
BK Bobcat
P.O. Box 5367
Redwood City, CA 94063

Certified Mail No. 7010 1870 0001 5596 5715

John Savidge
President
Savidge Construction, Inc.
4401 Sonja Court
Kelsey, CA 95667

Certified Mail No. 7010 1870 0001 5596 5722

Maya Kuttan, Esq.
Office of Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105

Date: 9/29/11



Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7010 1870 0001 5596 5739
Return Receipt Requested

Docket No. CAA 09-2011- 0006

SEP 29 2011

Daljit Bains
Chief Financial Officer
Aka Bains, Inc.
1139 Douglas Blvd
Roseville, CA 95678

Dear Mr. Bains:

Enclosed is your copy of the Consent Agreement and Final Order filed for Aka Bains, Inc., Savidge Construction, Inc., and BK Bobcat.

If you have any questions on the Agreement, please feel free to call Maya Kuttan at (415)972-3897.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosure

cc: California Air Resources Board



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7010 1870 0001 5596 5715
Return Receipt Requested

Docket No. CAA 09-2011-0006

SEP 29 2011

Joel A. Beck
Owner
BK Bobcat
P.O. Box 5367
Redwood City, CA 94063

Dear Mr. Beck:

Enclosed is your copy of the Consent Agreement and Final Order filed for Aka Bains, Inc., Savidge Construction, Inc., and BK Bobcat.

If you have any questions on the Agreement, please feel free to call Maya Kuttan at (415)972-3897.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosure

cc: California Air Resources Board



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 29 2011

James Ryden
Director
Enforcement Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Mr. Ryden:

Enclosed for your information is a copy of a Consent Agreement and Final Order regarding Aka Baines, Inc., Savidge Construction, Inc., and BK Bobcat for a violation of the Asbestos NESHAP during demolition of a structure located on Douglas Boulevard in Roseville, California.

If you have any questions, please contact Bob Trotter of my staff at (415) 972-3989.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7010 1870 0001 5596 5722
Return Receipt Requested

Docket No. CAA 09-2011- 0006

SEP 29 2011

John Savidge
President
Savidge Construction, Inc.
4401 Sonja Court
Kelsey, CA 95667

Dear Mr. Savidge:

Enclosed is your copy of the Consent Agreement and Final Order filed for Aka Bains, Inc., Savidge Construction, Inc., and BK Bobcat.

If you have any questions on the Agreement, please feel free to call Maya Kuttan at (415)972-3897.

Sincerely,


Deborah Jordan
Director, Air Division

Enclosure

cc: California Air Resources Board