

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

In the Matter of:)

Summit Ventures N.E., LLC)
1840 Sugarbush Access Road)
Warren, VT 05674)

Respondent.)

2008 MAR 31 P 4: 07
Docket No. EPCRA-01-2008-0054

EPA OFFICE
ADMINISTRATIVE COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR HEARING

Statutory and Regulatory Basis

This is a civil administrative action issued under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Part 22"). The authority to issue this Complaint has been delegated to the Regional Administrator, United States Environmental Protection Agency, Region 1 ("Complainant"). This Complaint alleges that Summit Ventures N.E., LLC ("Respondent") violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.

Under Section 312(a) of EPCRA and 40 C.F.R. §§370.20 and 370.25, any facility required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the local emergency planning committee ("LEPC"), the state emergency

response commission ("SERC"), and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information with respect to the preceding calendar year.¹

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provides that any person who violates any requirement of Section 312 after March 15, 2004 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.

General Allegations and Statement of Facts

1. Respondent is a for-profit corporation incorporated under the laws of the State of Delaware and has a usual place of business at 1840 Sugarbush Access Road, Warren, VT 05674.
2. Respondent operates Sugarbush Ski Resort, a government-owned commercially-operated ski resort facility located at 1840 Sugarbush Access Road, Warren, VT 05674 (the "facility").
3. On or about February 7, 2007, authorized representatives of EPA inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with EPCRA reporting requirements.
4. Respondent is a "person," as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
5. Respondent is an owner or operator of a "facility," as that term is defined by

¹ For 2007 reporting, Vermont requests that facilities use Tier II forms and submit these forms electronically. See the State of Vermont's Department of Public Safety, Vermont Emergency Management website at http://www.dps.state.vt.us/vem/index_hazmat.htm (accessed March 2008).

Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and 40 C.F.R. §372.3.

6. At all times relevant to the violations cited herein, Respondent stored propane, diesel fuel, gasoline, sodium hypochlorite 15% and aluminum sulfate 48.5%, which are "hazardous chemicals" as defined under 29 C.F.R. §1910.1200(c), in a quantity that exceeds the threshold planning quantity ("TPQ") set forth in 40 C.F.R. §370.20(b)(4) at the facility.

7. At all times relevant to the violations cited herein, Respondent was required, pursuant to the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder ("OSHA"), to prepare or have available a MSDS for propane, diesel fuel, gasoline, sodium hypochlorite 15% and aluminum sulfate 48.5% onsite.

Count I

8. During calendar year 2005, Respondent stored propane, diesel fuel, gasoline, sodium hypochlorite 15% and aluminum sulfate 48.5% onsite at the facility in quantities that exceeds the TPQ of 10,000 pounds set forth in 40 C.F.R. §370.20(b)(4).

9. Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier II) form to the SERC, LEPC and the local fire department with jurisdiction over the facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. §11022(d), for calendar year 2005 on or before March 1, 2006.

10. Respondent failed to prepare and submit a Tier II form by March 1, 2006 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. §11022(a), and 40 C.F.R. §§370.20 and 370.25.

11. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. §11045(c)(1), and 40 C.F.R. Part 19.

Proposed Civil Penalty

12. Section 325(c) of EPCRA, 42 U.S.C. §11045(c), 40 C.F.R. §§370.5(b) and 372.18, and 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 312 after March 15, 2004 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each violation. Failure to report in a timely manner, as required by Section 312, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, and may prevent comprehensive planning by federal, state and local authorities to properly prepare for accidental chemical releases.

13. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" (dated September 30, 1999) ("ERP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

14. Pursuant to Part V of the ERP, the first stage of calculating a penalty requires the

determination of the "extent" level of the violation and the second stage concerns the "gravity" level of the violation. The "extent" of the violation alleged in Count I was determined to be "Level 1" because Respondent failed to submit the Tier II chemical inventory form to the SERC, LEPC or fire department with 30 calendar days of the reporting deadline. The "gravity" of the violation alleged in Count I was determined to be "Level A" because the amount of the hazardous chemical not reported was greater than 10 times the reporting threshold.

15. Under the ERP, EPA has discretion to select an amount within the range specified in the appropriate matrix box. Respondent's failure to submit the Tier II form was determined to fall slightly above the mid-point of the Level 1-A matrix box, based on the presence of significant quantities of propane, diesel fuel and gasoline, which are highly flammable and/or highly flammable compressed liquids, resulting in a penalty of \$29,200.

16. After consideration of the Respondent's failure to voluntarily disclose the violations, its lack of a history of prior violations, degree of culpability, and economic benefit, the Complainant proposes no further adjustments to the gravity-based penalty amounts for the Section 312 violations.

17. The proposed penalty as stated in this Complaint was developed based on the best information available to the Agency at this time and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

18. Based upon the violations cited in this Complaint, and taking into account the nature, circumstances and gravity of these violations, the Complainant proposes that Respondent be assessed a civil penalty in the amount of \$29,200 for the violation alleged in this Complaint.

**NOTICE OF OPPORTUNITY TO
REQUEST A HEARING**

Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint.

To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Raphael Cody, the attorney assigned to represent EPA in this matter, at:

Raphael Cody
Enforcement Counsel
U.S. Environmental Protection Agency - Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Informal Settlement Conference

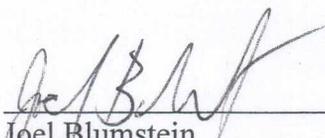
Whether or not Respondent requests a hearing, Respondent may confer informally with Rosina Toscano, Environmental Engineer in EPA Region 1's Office of Environmental Stewardship, (617) 918-1861, concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent's attorney is encouraged to contact Raphael Cody at (617) 918-1366 to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not enlarge the thirty-day period within which a written Answer must be submitted to avoid default.

Payment of the civil penalty alone does not satisfy Respondent's legal obligation to file complete and accurate emergency and hazardous chemical inventory forms (Tier I or Tier II forms). If Respondent chooses to remit the proposed penalty, it is still under a legal duty to submit complete and accurate Tier I or Tier II forms. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$32,500 per day of violation.

Raphael Cody, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

3/31/08
Date


Joel Blumstein
Acting Manager, Enforcement Unit
Office of Environmental Stewardship
U.S. EPA, Region 1