



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

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2011 SEP 27 P 3:12

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OFFICE OF  
REGIONAL HEARING CLERK

September 27, 2011

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

BY HAND

Re: In the Matter of Benevento Bituminous Products, LLC.  
EPCRA-01-2011-0077

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing.

Thank you for your attention to this matter.

Sincerely,

Maximilian Boal  
Enforcement Counsel

Enclosure

cc: Charles J. Benevento

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

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In the Matter of: )

Benevento Bituminous Products, LLC )

1 Roadstone Drive )  
Kingston, NH 03845 )

Respondent. )

Docket No. EPCRA-01-2011-0077

EPA-ORC  
OFFICE OF  
REGIONAL HEARING CLERK

**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"). Complainant is the Manager of the Legal Enforcement Unit of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 ("Complainant"). This Complaint alleges that Benevento Bituminous Products, 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. §§ 370.10, 370.12, 370.20, 370.40, 370.44, and 370.45, the owner or operator of any facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupa-

tional Safety and Health Act of 1970 (“OSHA”), and the hazard communication standards promulgated thereunder at 29 C.F.R. § 1910.1200(b)(1), 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 with jurisdiction over the facility. Pursuant to 40 C.F.R. §§ 370.40 and 370.45, 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.<sup>1</sup>

#### General Allegations and Statement of Facts

1. Respondent is a limited liability corporation incorporated under the laws of the State of New Hampshire and is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66. Respondent is part of the vertically integrated construction materials companies known as the “Benevento Companies.”
2. Respondent owns and/or operates a facility that manufactures asphalt, located at 1 Roadstone Drive in Kingston, NH 03845 (the “facility”). The facility consists of buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, and that are owned or operated by the same person.
3. The facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
4. On or about July 1, 2010, authorized representatives of EPA inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with EPCRA reporting requirements.

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<sup>1</sup> The New Hampshire SERC accepts only Tier II forms in satisfaction of the requirements of EPCRA Sections 311 and 312.

5. At all times relevant to the violations cited herein, Respondent stored “hazardous chemicals,” as defined under 40 C.F.R. § 370.66, including, but not limited to, diesel fuel and asphalt in quantities that exceed the minimum threshold levels (“MTL”) set forth in 40 C.F.R. § 370.10 at the facility.

6. At all times relevant to the violations cited herein, Respondent was required, pursuant to OSHA and regulations promulgated thereunder, to prepare or have available onsite MSDSs for hazardous chemicals present onsite, including but not limited to diesel fuel and asphalt.

#### Count I

7. Complainant re-alleges paragraphs 1 through 6.

8. During calendar year 2009, Respondent stored hazardous chemicals, including, but not limited to, diesel fuel and asphalt at the facility in a quantities that exceed the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10.

9. Respondent was required to prepare and submit a Tier I or 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 2009 on or before March 1, 2010.

10. Respondent failed to prepare and submit a Tier I or Tier II form by March 1, 2010 to the SERC, LEPC and the local fire department with jurisdiction over the facility, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.12(a), 370.40, 370.42, 370.44 and 370.45.

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), and 40 C.F.R. Part 19, authorize EPA to assess a civil penalty of up to \$32,500 per day for each violation of EPCRA Section 312, 42 U.S.C. § 11022, occurring after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation occurring after January 12, 2009. Failure to report in a timely manner, as required by Section 312 of EPCRA, may deprive the community of its right to know about chemicals used, 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 "Interim Final 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, with an amended penalty matrix dated November 16, 2009) ("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.

15. The “extent” of the violation alleged in Count I was determined to be “Level 1” because Respondent failed to submit a Tier I or Tier II chemical inventory form to the SERC, LEPC or fire department within 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 unreported hazardous chemicals present at the facility was greater than 10 times the reporting threshold.

16. Under the ERP, EPA has discretion to select an amount within the range specified in the appropriate matrix box. For Count I, Respondent’s failure to submit a Tier I or Tier II form was determined to fall in the middle of the Level 1-A matrix box, based on the circumstances of the violation, resulting in a penalty of \$32,000. Pursuant to Section VII(F) of the ERP, no adjustment to the base penalty for Count I was made based on the size of Respondent’s business.

17. 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 amount.

18. 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.

19. 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 \$32,000 for the violations alleged in this Complaint. For the violation, the proposed penalty is as follows:

Count I . . . . . \$32,000.

**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 Santiago  
Regional Hearing Clerk

U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, Massachusetts 02109-3912

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

Maximilian Boal  
Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (OES-04-2)  
Boston, Massachusetts 02109-3912

Informal Settlement Conference

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Maximilian Boal, Enforcement Counsel, at (617) 918-1750, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

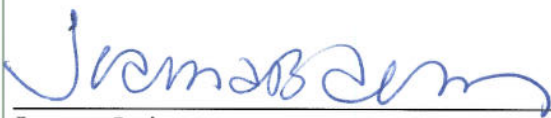
**Please note that a request for an informal settlement conference does not extend the thirty-day period within which a written Answer must be submitted to avoid default.**

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 \$37,500 per day of violation.



Maximilian Boal, Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

9/26/11  
Date

  
\_\_\_\_\_  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of:  
  
Benevento Bituminous Products,  
LLC  
900 Salem St.  
P.O. Box 692  
Wilmington, MA 01887  
  
Respondent

Docket No. EPCRA-01-2011-0077  
  
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:


Original and One Copy  
(Hand-Delivered):

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, Massachusetts 02109-3912

Copy, including 40 C.F.R.  
Part 22 and EPCRA Section 312  
ERP (Certified Mail,  
Return Receipt Requested):

Charles J. Benevento, President  
Benevento Bituminous Products, LLC  
900 Salem St.  
Wilmington, MA 01887

Dated: 9/27/2011

  
\_\_\_\_\_  
Maximilian Boal  
Enforcement Counsel  
U.S. EPA, Region I  
5 Post Office Square, Suite 100 (OES-04-2)  
Boston, Massachusetts 02109-3912  
Tel. (617) 918-1750  
Fax (617) 918-0750