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1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION IX  
4 75 HAWTHORNE STREET  
5 SAN FRANCISCO, CA 94105

2007 SEP 28 AM 10:52  
U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

6 In the Matter of: ) Docket No. EPCRA-09-2007-0031  
7 Silver Bell Mining, LLC )  
8 Respondent. ) **COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

9 **PRELIMINARY STATEMENT**

10 This is a civil administrative action instituted pursuant to  
11 Section 325(c) of Title III of the Superfund Amendments and  
12 Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as  
13 the Emergency Planning and Community Right-to-Know Act of 1986  
14 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. §  
15 11023, and the federal regulations promulgated to implement  
16 Section 313 at 40 C.F.R Part 372. Complainant is the Director of  
17 the Communities and Ecosystems Division, United States  
18 Environmental Protection Agency, Region IX ("EPA"), who has been  
19 duly delegated the authority to bring this action. Respondent is  
20 Silver Bell Mining, LLC. This Complaint and Notice of  
21 Opportunity for Hearing ("Complaint") serves as notice that  
22 Complainant has reason to believe that Respondent violated  
23 Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal  
24 regulations promulgated to implement Section 313 at 40 C.F.R Part  
25 372.

26 **APPLICABLE STATUTORY AND REGULATORY SECTIONS**

27 1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§  
28 11023 and 11048, EPA promulgated the Toxic Chemical Release

1 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

2 2. Section 313(a) of EPCRA, as implemented by 40 C.F.R. §  
3 372.30, provides that an owner or operator of a facility that  
4 meets the criteria set forth in EPCRA Section 313(b) and 40  
5 C.F.R. § 372.22, is required to submit annually to the  
6 Administrator of EPA and to the State in which the facility is  
7 located, no later than July 1st of each year, a toxic chemical  
8 release inventory reporting form (hereinafter "Form R") for each  
9 toxic chemical listed under 40 C.F.R. § 372.65 that was  
10 manufactured, processed or otherwise used at the facility during  
11 the preceding calendar year in quantities exceeding the  
12 thresholds established under EPCRA Section 313(f) and 40 C.F.R.  
13 §§ 372.25 and 372.28.

14 3. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide  
15 that the requirements of Section 313(a) and 40 C.F.R. § 372.30  
16 apply to an owner and operator of a facility that has 10 or more  
17 full-time employees; that is in a Standard Industrial  
18 Classification major group codes 10 (except 1011, 1081, and  
19 1094), 12 (except 1241), and 20 through 39; industry codes 4911,  
20 4931, or 4939 (limited to facilities that combust coal and/or oil  
21 for the purpose of generating power for distribution in  
22 commerce), or 4953 (limited to facilities regulated under the  
23 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.  
24 §6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities  
25 primarily engaged in solvent recovery services on a contract or  
26 fee basis); and that manufactures, processes, or otherwise uses

1 one or more toxic chemicals listed under Section 313(c) of EPCRA  
2 and 40 C.F.R. § 372.65 in quantities in excess of the applicable  
3 thresholds established under EPCRA Section 313(f) and 40 C.F.R.  
4 §§ 372.25 and 372.28.

5 **GENERAL ALLEGATIONS**

6 4. Respondent is a "person" as that term is defined by  
7 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

8 5. At all times relevant to this Complaint, Respondent was  
9 an owner and operator of a "facility," as that term is defined by  
10 Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §  
11 372.3, which is located at 25000 West Avra Valley Road, Marana,  
12 Arizona (hereinafter "Facility").

13 6. At all times relevant to this Complaint, the Facility  
14 had 10 or more "full-time employees," as that term is defined at  
15 40 C.F.R. § 372.3.

16 7. The Facility is classified in Standard Industrial  
17 Classification code 1021, which falls within the Standard  
18 Industrial Classification code 10.

19 **COUNT I**

20 **Failure to File Timely Form R for Cobalt for Calendar Year 2001**

21 8. Paragraphs 1 through 7 are realleged and incorporated  
22 herein by reference.

23 9. During calendar year 2001, Respondent otherwise used  
24 approximately 15,622 pounds of Cobalt, CAS No. 7440-48-4, a  
25 chemical listed under 40 C.F.R. § 372.65.

26 10. The quantity of Cobalt that Respondent otherwise used at  
27

1 the Facility during calendar year 2001 exceeds the established  
2 threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(b).

3 11. Respondent failed to submit a Form R for Cobalt to the  
4 EPA Administrator and to the State of Arizona on or before July  
5 1, 2002.

6 12. Respondent's failure to submit a timely Form R for  
7 Cobalt that Respondent otherwise used at the Facility during  
8 calendar year 2001 constitutes a violation of Section 313 of  
9 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

10 **COUNT II**

11 **Failure to File Timely Form R for Cobalt for Calendar Year 2002**

12 13. Paragraphs 1 through 7 are realleged and incorporated  
13 herein by reference.

14 14. During calendar year 2002, Respondent otherwise used  
15 approximately 15,622 pounds of Cobalt, CAS No. 7440-48-4, a  
16 chemical listed under 40 C.F.R. § 372.65.

17 15. The quantity of Cobalt that Respondent otherwise used at  
18 the Facility during calendar year 2002 exceeds the established  
19 threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(b).

20 16. Respondent failed to submit a Form R for Cobalt to the  
21 EPA Administrator and to the State of Arizona on or before July  
22 1, 2003.

23 17. Respondent's failure to submit a timely Form R for  
24 Cobalt that Respondent otherwise used at the Facility during  
25 calendar year 2002 constitutes a violation of Section 313 of  
26 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

1 COUNT III

2 **Failure to File Timely Form R for Cobalt for Calendar Year 2003**

3 18. Paragraphs 1 through 7 are realleged and incorporated  
4 herein by reference.

5 19. During calendar year 2003, Respondent otherwise used  
6 approximately 15,622 pounds of Cobalt, CAS No. 7440-48-4, a  
7 chemical listed under 40 C.F.R. § 372.65.

8 20. The quantity of Cobalt that Respondent otherwise used at  
9 the Facility during calendar year 2003 exceeds the established  
10 threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(b).

11 21. Respondent failed to submit a Form R for Cobalt to the  
12 EPA Administrator and to the State of Arizona on or before July  
13 1, 2004.

14 22. Respondent's failure to submit a timely Form R for  
15 Cobalt that Respondent otherwise used at the Facility during  
16 calendar year 2003 constitutes a violation of Section 313 of  
17 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

18 PROPOSED CIVIL PENALTY

19 Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.  
20 Part 19 authorize EPA to assess a penalty of up to \$27,500 for  
21 each violation of Section 313 of EPCRA that occurred on or after  
22 January 31, 1997 but before March 15, 2004 and up to \$32,500 for  
23 each violation that occurred on or after March 15, 2004. Based  
24 on the violations cited in this Complaint, on the nature,  
25 circumstances, extent, and gravity of the violations alleged, and  
26 on the degree of Respondent's culpability, as set forth in the

1 Enforcement Response Policy for Section 313 of EPCRA dated August  
2 10, 1992 (a copy of which is enclosed), EPA proposes that  
3 Respondent be assessed the following civil penalty for the  
4 violations alleged in this Complaint:

5 COUNT I

6 Failure to submit a timely Form R for Cobalt for calendar year  
7 2001:  
8 Circumstance Level 1, Extent Level B . . . . . \$ 18,700

9 COUNT II

10 Failure to submit a timely Form R for Cobalt for calendar year  
11 2002:  
12 Circumstance Level 1, Extent Level B . . . . . \$ 18,700

13 COUNT III

14 Failure to submit a timely Form R for Cobalt for calendar year  
15 2003:  
16 Circumstance Level 4, Extent Level B . . . . . \$ 20,523

17 Total Penalty. . . . . \$ 57,923

18 **Total Penalty Proposed (rounded to nearest hundred). . . \$ 57,900**

19 NOTICE OF OPPORTUNITY TO REQUEST A HEARING

20 You have the right to request a formal hearing to contest  
21 any material fact set forth in this Complaint or to contest the  
22 appropriateness of the proposed penalty. Any hearing requested  
23 will be conducted in accordance with the Administrative Procedure  
24 Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of  
25 Practice Governing the Administrative Assessment of Civil  
26 Penalties and the Revocation/Termination or Suspension of Permits  
27 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of  
28 the Consolidated Rules of Practice is enclosed with this  
Complaint.

1        You must file a written Answer within thirty (30) days of  
2 receiving this Complaint to avoid being found in default, which  
3 constitutes an admission of all facts alleged in the Complaint  
4 and a waiver of the right to a hearing, and to avoid having the  
5 above penalty assessed without further proceedings. If you  
6 choose to file an Answer, you are required by the Consolidated  
7 Rules of Practice to clearly and directly admit, deny, or explain  
8 each of the factual allegations contained in this Complaint to  
9 which you have any knowledge. If you have no knowledge of a  
10 particular fact and so state, the allegation is considered  
11 denied. Failure to deny any of the allegations in this Complaint  
12 will constitute an admission of the undenied allegation.

13        The Answer shall also state the circumstances and arguments,  
14 if any, which are alleged to constitute the grounds of defense,  
15 and shall specifically request an administrative hearing, if  
16 desired. If you deny any material fact or raise any affirmative  
17 defense, you will be considered to have requested a hearing.

18        The Answer must be filed with:

19                                **Regional Hearing Clerk**  
20                                **USEPA, Region IX**  
21                                **75 Hawthorne Street**  
22                                **San Francisco, CA 94105**

23        In addition, please send a copy of the Answer and all other  
24 documents that you file in this action to:

25                                **Carol Bussey**  
26                                **Assistant Regional Counsel**  
27                                **Office of Regional Counsel (ORC-2)**  
28                                **USEPA, Region IX**  
                                 **75 Hawthorne Street**  
                                 **San Francisco, CA 94105**

1 Ms. Bussey is the attorney assigned to represent EPA in this  
2 matter. Her telephone number is (415)972-3950.

3 You are further informed that the Consolidated Rules of  
4 Practice prohibit any ex parte (unilateral) discussion of the  
5 merits of any action with the Regional Administrator, Regional  
6 Judicial Officer, Administrative Law Judge, or any person likely  
7 to advise these officials in the decision of the case, after the  
8 Complaint is issued.

9 **INFORMAL SETTLEMENT CONFERENCE**

10 EPA encourages all parties against whom a civil penalty is  
11 proposed to pursue the possibility of settlement through informal  
12 conferences. Therefore, whether or not you request a hearing,  
13 you may confer informally with EPA through Carol Bussey, the EPA  
14 attorney assigned to this case, regarding the facts of this case,  
15 the amount of the proposed penalty, and the possibility of  
16 settlement. **An informal settlement conference does not, however,**  
17 **affect your obligation to file an Answer to this Complaint.**

18 **ALTERNATIVE DISPUTE RESOLUTION**

19 The parties also may engage in any process within the scope  
20 of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et  
21 seq., which may facilitate voluntary settlement efforts. Dispute  
22 resolution using alternative means of dispute resolution does not  
23 divest the Presiding Officer of jurisdiction nor does it  
24 automatically stay the proceeding.

25 **QUICK RESOLUTION**

26 Instead of requesting an informal settlement conference or  
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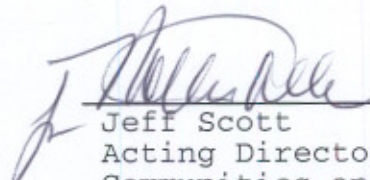
1 filing an Answer requesting a hearing, you may choose to resolve  
2 the proceeding by paying the specific penalty proposed in the  
3 Complaint and filing a copy of the check or other instrument of  
4 payment with the Regional Hearing Clerk within thirty (30) days  
5 after receiving the Complaint. If you wish to resolve the  
6 proceeding in this manner instead of filing an answer but need  
7 additional time to pay the penalty, you may file a written  
8 statement stating that you agree to pay the proposed penalty in  
9 accordance with 40 C.F.R § 22.18(a)(1) with the Regional Hearing  
10 Clerk within 30 days after receiving the Complaint. The written  
11 statement need not contain any response to, or admission of, the  
12 allegations in the Complaint. Within sixty (60) days after  
13 receiving the Complaint, the full amount of the proposed penalty  
14 must be paid. Failure to make such payment within this sixty-day  
15 period may subject you to default. Upon receipt of payment in  
16 full, the Regional Judicial Officer will issue a final order.  
17 Payment by a respondent shall constitute a waiver of the  
18 respondent's rights to contest the allegations and to appeal the  
19 final order. In addition, full payment of the proposed penalty  
20 shall only resolve Respondent's liability for Federal civil  
21 penalties for violations and facts alleged in the Complaint and  
22 does not affect the right of EPA or the United States to pursue  
23 appropriate injunctive or other equitable relief or criminal  
24 sanctions for any violations of law.

25 **CONSENT AGREEMENT AND FINAL ORDER**

26 EPA has the authority, where appropriate, to modify the  
27  
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1 amount of the proposed penalty to reflect any settlement reached  
2 with you in an informal conference or through alternative dispute  
3 resolution. The terms of such an agreement would be embodied in  
4 a Consent Agreement and Final Order. A Consent Agreement signed  
5 by both parties would be binding as to all terms and conditions  
6 specified therein when the Regional Judicial Officer signs the  
7 Final Order.

8  
9 Date: 9-28-2007

  
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Jeff Scott  
Acting Director  
Communities and Ecosystems Division  
U.S. EPA, Region IX

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CERTIFICATE OF SERVICE

I certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing against Silver Bell Mining, LLC (EPCRA-09-2007-0031) ("Complaint") was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Complaint; the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22; the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act; and the Interim Data Quality Amendment to the EPCRA Section 313 Enforcement Response Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following representative authorized to receive service of process on behalf of Silver Bell Mining, L.L.C.:

Thomas H. Phillips  
General Manager  
Silver Bell Mining, L.L.C.  
25000 W. Avra Valley Road  
Marana, AZ 85653

Certified Return Receipt No. 7007 0710 0003 6239 8229

Dated: Sept. 28, 2007

By: Patricia Maravilla  
Patricia Maravilla  
Toxics Release Inventory Program  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne St. CED-4  
San Francisco, CA 94105