

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf 9/27/11
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2011-0046

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Jay Peak Resort, Inc.
4850 VT Route 242
Jay, VT 05859-9404

Total Dollar Amount of Receivable \$ 80,000 Due Date: 11/5/11

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number

RECEIVED

2011 SEP 27 A 9:44

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

IN THE MATTER OF)

Jay Peak Resort, Inc.)
Jay, Vermont)

Respondent.)

DOCKET NO. CWA-01-2011-0046

CONSENT AGREEMENT AND
FINAL ORDER

Proceeding Under Section
309(g) of the Clean Water
Act, 33 U.S.C. § 1319(g)

INTRODUCTION

1. This Consent Agreement and Final Order by the U.S. Environmental Protection Agency ("EPA") is issued to Jay Peak Resort, Inc. ("Respondent") under the authority granted by Section 309(g)(2)(B) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," at 40 C.F.R. Part 22 (the "Consolidated Rules").

2. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, the parties agree to simultaneously commence and conclude this action for civil penalties by the issuance of this Consent Agreement and Final Order.

3. The Complainant is the Director of the Office of Environmental Stewardship, EPA Region 1. Complainant alleges that Respondent discharged pollutants into waters of the United States without authorization by a permit from the Army Corps of Engineers as required by Section 404 of the Clean Water Act, 33 U.S.C. § 1344, or other authorization, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

STATUTORY AND REGULATORY AUTHORITY

4. EPA takes this action under the authority of Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a) and Section 404 of the Act, 33 U.S.C. § 1344. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the State of Vermont has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty against Respondent.

DESCRIPTION OF VIOLATIONS

5. Jay Peak Resort, Inc. ("Jay Peak"), is a corporation registered in the State of Vermont, with a principal street address of 4850 VT Route 242, Jay, Vermont, and is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. Jay Peak owns a ski resort facility in Jay, Vermont. On this site sits an approximately 170 acre parcel of land in the vicinity

of the Jay Peak Access Road, Vermont Route 242, and the Jay Branch Brook in Jay Vermont, upon which Jay Peak has developed a golf course.

7. The Jay Branch Brook is a perennial stream that drains into the Missisquoi River, which in turn drains into Lake Champlain. The unnamed streams that are the subject of this Consent Agreement are tributaries to Jay Branch Brook, and the wetlands that are the subject of this Consent Agreement are adjacent to Jay Branch Brook and unnamed streams that are tributaries to Jay Branch Brook.

8. Prior to the alterations described below, the wetlands that are the subject of this Consent Agreement were primarily forested areas, and were similar to undisturbed areas adjacent to the currently developed golf course.

9. In the early 1990s, Jay Peak began planning a golf course development at its Jay, Vermont ski resort. Jay Peak developed a master plan in 1992 that would involve the construction of 27 golf holes, a 40 acre golf instruction facility, and approximately 500 single family homes.

10. Jay Peak refined its master plan for the golf course development, and a new plan involving an 18 hole golf course was developed.

11. In 2004, Jay Peak began constructing the 18 hole golf course at its Jay, Vermont ski resort. The construction of the course unfolded over a three year period.

12. In constructing the golf course from 2004 through 2006, Jay

Peak's contractor, NMP Construction, acting under the direction or control of Jay Peak, placed dirt, sand and rocks (collectively "dredged and fill" material) into 1.8 acres of wetlands during clearing and grading activities; and into approximately 3,205 linear feet of streams during dewatering, rerouting, and/or culverting activities. This work resulted in discharges of dredged and fill material into 2.1 acres of wetlands and streams.

13. Jay Peak did not apply for or receive a Section 404 permit for the discharge of dredged or fill material into waters of the United States for work associated with the construction of the golf course.

14. On August 24, 2010, EPA issued Findings of Violation and an Order for Compliance to Jay Peak related to the violations alleged in this Consent Agreement.

15. Jay Peak has conducted substantial wetland and stream restoration in compliance with the terms of the Order for Compliance.

16. The wetlands impacted by the golf course construction are adjacent to Jay Branch Brook and unnamed streams that flow into Jay Branch Brook, which flows into the Missisquoi River, which in turn drains into Lake Champlain. The streams and wetlands that were dewatered, filled, diverted, and/or culverted in construction of the golf course; Jay Branch Brook; the Missisquoi River; and Lake Champlain are all "waters of the United States" as defined at 33 C.F.R. § 328.3 and 40 C.F.R. §§ 122.2 and 232.2, and therefore are "navigable waters" under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

17. The wetlands adjacent to unnamed streams and Jay Branch Brook that were filled in the construction of the golf course are "wetlands" as defined at 33 C.F.R. § 328.3 and 40 C.F.R. §§ 122.2 and 232.2.

18. The dredged and fill materials discharged into the streams and wetlands, as described in paragraph 13 above, are "pollutants" under Section 502(6) of the Act, 33 U.S.C. § 1362(6).

19. Jay Peak, and/or persons working under its direction, control, supervision, or authorization, used excavators, bulldozers, dump trucks, and other construction equipment (collectively "heavy equipment") at the site which resulted in the discharge of dredged and fill materials into the wetlands and streams.

20. The heavy equipment used to discharge the dredged and fill materials into the wetlands and streams constitute "point sources" under Section 502(14) of the Act, 33 U.S.C. § 1362(14).

21. The placement of the dredged and fill materials into the wetlands and streams by use of the heavy equipment constitutes the "discharge of pollutants" under Section 502(12) of the Act, 33 U.S.C. § 1362(12).

22. At the time that the discharges into the wetlands and streams occurred, neither Jay Peak nor anyone on its behalf had applied for or received a permit authorizing such discharges under Section 404 of the Clean Water Act. Moreover, no other provision of the Act authorized the discharge of pollutants into the streams and wetlands at the site.

23. As set forth in findings 1-22 above, discharges of pollutants (dredged and fill materials) from point sources (excavator, bulldozer, and other heavy equipment) to waters of the U.S. (the streams and wetlands at the site) occurred without a permit or other authorization under the Clean Water Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

24. Each day that the dredged and fill materials remained in the streams and wetlands without authorization from a permit issued under Section 404 of the Act, 33 U.S.C. § 1344, constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

25. Paragraphs 1-24 are incorporated by reference as if fully set forth herein.

26. EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this Consent Agreement and Final Order is the most appropriate means of resolving this matter.

Terms of Settlement

27. The provisions of this Consent Agreement and Final Order shall be binding upon EPA and upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

28. For purposes of this Consent Agreement, Respondent admits the jurisdictional allegations contained in this agreement, neither admits nor denies the specific factual allegations herein, and

consents to the assessment of the administrative penalty set forth herein.

29. For purposes of this Consent Agreement only, Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or alleged fact set forth in this Consent Agreement and Final Order.

30. The civil penalty agreed upon herein has been determined in accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). In developing the settlement penalty in this Consent Agreement and Final Order, Complainant has considered the nature, circumstances, extent and gravity of the violations, the Respondent's prior compliance history, the degree of culpability, the economic benefit or savings accruing to the Respondent by virtue of the violations, Respondent's ability to pay the settlement penalty, and such other matters as justice may require.

31. Respondent consents to the issuance of this Consent Agreement and Final Order and agrees to the payment of the civil penalty described below.

32. Based upon the nature of the violations, and other relevant factors identified in paragraph 30 above, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **EIGHTY-THOUSAND DOLLARS (\$80,000)**.

33. Not more than ten (10) days after the final date of this Consent Agreement and Final Order, Respondent shall submit a

cashier's or certified check, payable to the order of the "Treasurer,
United States of America," in the amount of **\$80,000** to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or, Respondent may make payment by electronic funds transfer via:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

Respondent shall simultaneously submit copies of the penalty payment
check or confirmation of the electronic wire transfer to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail code ORA 18-1
Boston, MA 02109-3912

and

Jeffrey Kopf
Office of Environmental Stewardship
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail code OES 04-4
Boston, MA 02109-3912

34. The check or wire transfer shall bear the case name and docket
number (CWA-01-2011-0046). Interest and late charges shall be paid
as specified in paragraph 36 herein.

35. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.

36. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates, from the effective date of this Consent Agreement and Final Order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

37. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this

agreement is based, or for Respondent's violation of any applicable provision of law.

REQUIRED NOTICE

38. Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA will satisfy this requirement for notice by providing public notice of, and reasonable opportunity to comment on, this Consent Agreement prior to the issuance of the Final Order.

ADDITIONAL PROVISIONS

39. Issuance of this Consent Agreement and Final Order constitutes a final settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the Act specifically alleged herein. This Consent Agreement and Final Order is not intended to nor shall it be construed to operate in any way to resolve any criminal liability of the Respondent.

40. Issuance of this Consent Agreement and Final Order does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially pursuant to

Sections 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the Act, 33 U.S.C. § 1364.

41. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Act, or with other applicable federal, state or local laws, regulations or requirements, including any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein. Full payment of the penalty required in this Consent Agreement and Final Order shall not affect the right of the United States to pursue appropriate injunctive or other relief for any violations of law.

42. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

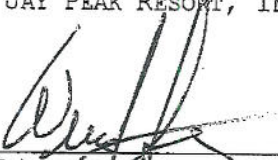
43. This Consent Agreement and Final Order shall not relieve Respondent of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

44. Except as provided in paragraph 36, each party shall bear its own costs and attorneys' fees in connection with this action resolved by this Consent Agreement and Final Order.

EXECUTION

45. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

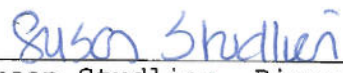
FOR JAY PEAK RESORT, INC.



William J. Stenger,
President and CEO
Jay Peak Resort, Inc.

Dated: Sept. 2. 2011

FOR U.S. EPA REGION 1




Susan Studlien, Director
Office of Environmental Stewardship
U.S. ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND

Dated: 09/06/11

FINAL ORDER

46. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. 1319(g)(4)(C). If the petition is denied, this Consent Agreement and Final Order shall become final thirty (30) days after such denial. If the petition is granted, the Consent Order will be set aside and a hearing in accordance with Section 309(g)(2)(B) of the Act shall be held.

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region I



Jill T. Metcalf
Acting Regional Judicial Officer
U.S. EPA, Region I

Dated: Sept. 26, 2011

In the Matter of: Jay Peak Resort, Inc.
Docket No. CWA 01-2011-0046

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Original and 1 copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy via Certified Mail,
Return Receipt Requested


Bill Stenger
President and CEO
Jay Peak Resort
4850 VT Route 242
Jay, Vermont 05859-9404

Copy via Certified Mail,
Return Receipt Requested
and copy of Part 22 Rules

Peter D. Van Oot
Downs Rachlin Martin PLLC
8 South Park Street, PO Box 191
Lebanon, NH 03766-0191

Date: _____

9/27/11



Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency
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