

STATE OF VERMONT
WASHINGTON COUNTY, SS.

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|-------------------------|---|---------------------------|------|
| STATE OF VERMONT AGENCY |) | | |
| OF NATURAL RESOURCES, |) | | |
| Plaintiff, |) | | |
| |) | Washington Superior Court | |
| v. |) | Docket No. | Wncv |
| |) | | |
| MOUNT SNOW, LTD., |) | | |
| Defendant. |) | | |

PLEADINGS BY AGREEMENT

NOW COMES the State of Vermont Agency of Natural Resources, by and through Vermont Attorney General William H. Sorrell, and Defendant Mount Snow, Ltd., by its respective undersigned counsel, and hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

THE STATE’S ALLEGATIONS

The Parties

1. The State of Vermont Agency of Natural Resources (“ANR” or “the Agency”) is a state agency with offices in Waterbury, Vermont.
2. Mount Snow, Ltd. (“Mt. Snow” or “Defendant”) is a Vermont corporation organized under the laws of the State of Vermont with its principal place of business in West Dover, Vermont. Mt. Snow engages in the ownership of Mount Snow Resort which includes operation of a ski area, real estate development, retail shops, a golf course, mountain biking trails, and other resort related activities in West Dover and the surrounding area. Since April 2007, Mt. Snow has been a subsidiary of Peak Resorts, Inc., a Missouri-based company who owns and operates a number of ski area/resorts in the United States.

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Statutory Scheme

3. The Agency has the authority to regulate the storage and disposal of hazardous waste through 10 V.S.A., Chapter 159 and the Vermont Hazardous Waste Management Regulations (“HWMR”).

4. Pursuant to 10 V.S.A. § 8221, the Secretary of the Agency may bring an action in superior court to enforce Vermont’s environmental laws. The action shall be brought by the Attorney General in the name of the State.

Facts relating to Defendant and Allegations

5. The Agency conducted inspections of Defendant’s facilities at the Mount Snow Resort on February 27, 2008 and April 29, 2008 (hereinafter the “inspections”).

6. During one or both of these inspections, the Agency found the following:

- a. Defendant was disposing of hazardous waste at its Howe Farm facility by evaporation and without certification;
- b. hazardous waste was transported by Defendant without a permit from the State;
- c. Defendant was making no hazardous waste determinations for ski-tuner emulsions, various products contained in aerosol cans, and sand blast dust from the lift maintenance shop. Defendant also failed to make hazardous waste determinations for waste disposed at its Howe Farm facility;
- d. Defendant’s short-term hazardous waste storage containers were placed out of doors on a containment pad but without a structure that was able to shed rain and snow;
- e. Defendant’s short-term hazardous waste storage area was not equipped to prevent the freezing of waste;
- f. Defendant’s spill control equipment was not located in the vicinity of the short-term hazardous waste storage area;
- g. Defendant had placed a container holding used oil and water outside without a means to prevent freezing;

- h. there was no warning sign posted in Defendant's short-term hazardous waste storage area;
- i. the aisle space in Defendant's short-term hazardous waste storage area was inadequate to permit unobstructed movement of personnel, fire safety equipment, or spill control equipment.;
- j. Defendant did not maintain a list of hazardous wastes stored in its short-term hazardous waste storage area;
- k. daily inspections of the short-term hazardous waste storage area were not occurring;
- l. required annual training concerning hazardous waste handling and emergency procedures had not been provided to Defendant's employees with hazardous waste management responsibilities;
- m. required emergency preparedness information was posted on its company computer system but not posted next to each phone at Defendant's waste handling areas;
- n. Defendant failed to make arrangements with local hospitals to familiarize hospital personnel with the types of waste it generates;
- o. Defendant failed to mark satellite accumulation containers, including plastic bags used to store spent hazardous waste contaminated disposable absorbent wipes with the words "hazardous waste" and other words to describe their contents;
- p. full containers of disposable absorbent wipes generated at the lift maintenance shop were stored at an offsite location, the Howe Farm, prior to being shipped for disposal;
- q. drums in Defendant's short-term hazardous waste storage area were covered in snow, and snow around the base of the drums obscured the labels of some of the drums;
- r. used oil to be burned had not been recently evaluated by Defendant for halogens and other suspected constituents or properties; and
- s. used fluorescent lamps were not stored in boxes or containers.

7. Under section 7-302(a) of the Vermont Hazardous Waste Management Rules

("HWMR"), disposal of hazardous waste by evaporation is prohibited. Under HWMR 7-

504(a), unless excluded by the HWMR, certification from the Agency is required to treat, store, dispose, or accept any hazardous waste.

8. Defendant's disposal of hazardous waste at its Howe Farm facility by evaporation and without certification violated HWMR 7-302(a) and 7-504(a).

9. Pursuant to HWMR 7-406(a), no person shall transport or accept for transport any hazardous waste without first obtaining a permit to do so from the Agency.

10. By transporting hazardous waste without a permit from the State, Defendant violated HWMR 7-406(a).

11. HWMR 7-303, requires any person who generates a waste to determine if that waste is a hazardous waste in accordance with the HWMR.

12. By failing to make its own waste determinations for ski-tuner emulsions, various products contained in aerosol cans, sand blast dust from the lift maintenance shop, and waste materials at the Howe Farm facility, Defendant violated HWMR 7-303.

13. HWMR 7-311(a)(2) states that hazardous waste containers may be placed out-of-doors only if they are within a structure that sheds rain and snow.

14. By storing short-term hazardous waste storage containers outdoors without a structure that sheds rain and snow, Defendant violated HWMR 7-311(a)(2).

15. Pursuant to HWMR 7-311(a)(4), hazardous wastes subject to freezing and expansion may not be stored in containers or above ground tanks unless mechanical or physical means are employed to prevent freezing.

16. By having a short-term hazardous waste storage area that was not equipped to prevent the freezing of waste, Defendant violated HWMR 7-311(a)(4).

17. HWMR 7-311(a)(5) requires that spill control equipment must be available in the immediate vicinity of the short-term storage area.

18. By not having spill control equipment located in the vicinity of its short-term hazardous waste storage area, Defendant violated HWMR 7-311(a)(5).

19. Under HWMR 7-806(b)(7), a container holding used oil may only be stored outside if the container is placed within a structure that sheds rain and snow.

20. By storing drums of used oil outside, not within a structure that sheds rain and snow, Defendant violated HWMR 7-806(b)(7).

21. Pursuant to HWMR 7-311(e)(1), small quantity generators must post a sign that must be visible from at least 25 feet, with the legend “Danger-Hazardous Waste Storage Area-Authorized Personnel Only” at each short-term hazardous waste storage area.

22. By having no warning signs posted at the short-term hazardous waste storage area, Defendant violated HWMR 7-311(e)(1).

23. Under HWMR 7-311(b)(3), there must be sufficient aisle space between containers to allow for the unobstructed movement of personnel, fire protection equipment, and spill control equipment.

24. By not having adequate aisle space in its short-term hazardous waste storage area to permit unobstructed movement of personnel, fire safety equipment, and spill control equipment, Defendant violated HWMR 7-311(b)(3).

25. HWMR 7-311(d)(1) requires, in part, small quantity generators to maintain, at a location apart from the short-term hazardous waste storage area, a list of all hazardous wastes currently in storage.

26. By failing to maintain a list of hazardous wastes stored in its short-term storage area, Defendant violated HWMR 7-311(d)(1).

27. HWMR 7-311(d)(2) requires small quantity generators to conduct daily inspections during regular business days of each short-term hazardous waste storage area.

28. By failing to conduct daily inspections of its short-term hazardous waste storage area, Defendant violated HWMR 7-311(d)(2).

29. HWMR 7-307(c)(9)(C) requires small quantity generators to ensure that each employee is familiar with proper waste handling and emergency procedures relevant to their responsibilities during regular facility operations and emergencies.

30. By failing to ensure that employees with hazardous waste management responsibilities were familiar with proper hazardous waste handling and emergency procedures, Defendant violated HWMR 7-307(c)(9)(C).

31. HWMR 7-307(c)(9)(B) requires small quantity generators to post emergency preparedness information next to each telephone located in the vicinity of where hazardous wastes are managed. This information includes, *inter alia*, the name and telephone number of a site's emergency coordinator, locations of fire extinguishers, spill control material and fire alarms, and the telephone of the fire department unless the site has a direct alarm.

32. By failing to post required emergency preparedness information next to each phone in waste handling areas, Defendant violated HWMR 7-307(c)(9)(B).

33. Under HWMR 7-309(a)(4)(D), small quantity generators must make arrangements to familiarize local hospitals with the properties of hazardous wastes handled at the facilities and the types of injuries or illnesses that could result from fires, explosions or releases.

34. By failing to complete arrangements with local hospitals to familiarize hospital personnel with the types of wastes it generates, Defendant violated HWMR 7-309(a)(4)(D).

35. Pursuant to HWMR 7-310(a)(5), small quantity generators are permitted to accumulate as much as one cubic yard of non-liquid, Vermont regulated, hazardous waste; one quart of acutely hazardous waste; or 55 gallons of any other hazardous waste in containers at or near the point of generation, without a permit if certain conditions are met, including the containers being marked with the words “hazardous waste” and other words that identify their contents.

36. By failing to mark satellite accumulation containers with the words “hazardous waste” and with other words to identify the container’s contents, Defendant violated HWMR 7-310(a)(5).

37. Pursuant to HWMR 7-310(a)(8), small quantity generators are permitted to accumulate as much as one cubic yard of non-liquid, Vermont regulated, hazardous waste; one quart of acutely hazardous waste; or 55 gallons of any other hazardous waste in containers at or near the point of generation, without a permit if certain conditions are met, including all containers being dated when filled and moved to a short-term hazardous waste storage area within three days of becoming full.

38. By moving full containers of disposable absorbent wipes generated at the lift maintenance shop to an offsite location, the Howe Farm, which is not a short-term hazardous waste storage area, for storage prior to being shipped for disposal, Defendant violated HWMR 7-310(a)(8).

39. Under HWMR 7-311(b)(2), containers of hazardous waste must be stored such that the hazardous waste labeling is visible.

40. By storing hazardous waste in snow covered drums and in such a manner so as to have the labels on some of the drums be obscured by snow around the base of the drums, Defendant violated HWMR 7-311(b)(2).

41. Pursuant to HWMR 7-812(c)(1)(A), used oil that is burned for energy recovery must be tested from each source for total halogens.

42. By failing to test used oil that was to be burned for halogens and other suspected constituents or properties, Defendant violated 7-812(c)(1)(A).

43. Under HWMR 7-912(d)(5)(A)(i), universal waste lamps must be managed in a way that prevents releases of universal waste or a component of a universal waste into the environment. Universal waste lamps must be packaged in containers that are structurally sound and adequate to prevent breakage.

44. By storing used florescent lamps without protection of boxes or other containers to prevent breakage, Defendant violated HWMR 7-912(d)(5)(A)(i).

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

Defendant answers the preceding allegations as follows:

45. Defendant admits the allegations set forth in paragraphs 1-44.

46. The State and Defendant have agreed to resolve the violations set forth herein through a Stipulation for Entry of Consent Order, which has been executed by the parties and is being filed in this action together with these Pleadings by Agreement.

DATED at Montpelier, Vermont this 4th day of March, 2010.

WILLIAM H. SORRELL
ATTORNEY GENERAL

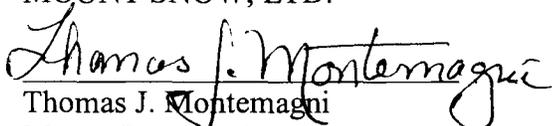
By:


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DATED at W. Dover, Vermont this 26th day of February, 2010.

MOUNT SNOW, LTD.

By:


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