



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 16 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jean S. Konowalczyk, Counsel
Amerigas Propane, L.P.
P.O. Box 965
Valley Forge, PA 19482

Re: Amerigas Propane, L.P., Capac, Michigan, Consent Agreement and Final Order,
Docket No. **EPCRA-05-2008-0011**

Dear Ms. Konowalczyk,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on April 16, 2008.

Please pay the EPCRA civil penalty in the amount of \$3,000 in the manner prescribed in paragraphs 32-37, and reference your check with the billing document number 2750844E011 and the docket number **EPCRA-05-2008-0011**.

Your payment is due on May 15, 2008.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jose de Leon, Associate Regional Counsel, at (312) 353-7456. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz
Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Jose de Leon (w/ enclosure)

Susan Tennebaum, MI SERC (w/ enclosure)

Marcy Toney
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Amerigas Propane, L.P.
14900 Downey Road
Capac, MI 48014

) Docket No. EPCRA-05-2008-0011
)
) Proceeding to Assess a Civil Penalty under
) Section 325(c) of the Emergency Planning
) and Community Right-to-Know Act of
) 1986, 42 U.S.C. § 11045(c)

Respondent.

Consent Agreement and Final Order
Preliminary Statement

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1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules”) as codified at 40 C.F.R. Part 22 (2005).

2. Complainant is the Branch Chief, Emergency Response Branch, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is Amerigas Propane, L.P. a limited partnership doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO), 40 C.F.R. §22.13(b)(2005).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty; and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Amerigas Propane, L.P. admits the jurisdictional allegations in this CAFO and neither admits or denies the factual allegations in this CAFO.

8. Amerigas Propane, L.P. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), appropriate local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by May 1, 1988, and annually thereafter a completed Emergency and Hazardous Chemical Inventory Form (Tier I of Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S.EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. C.F.R. § 1910.1200(d)(3) provides that the chemical manufacturer, importer, or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous: (I) 29 C.F.R. § 1910 subpart Z.

12. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Violations

13. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of the Facility located at Amerigas Propane, L.P., 14900 Downey Road, Capac, Michigan (Facility).

15. At all times relevant to this CAFO, Respondent was an employer at the Facility.

16. Respondent’s Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

17. Respondent’s Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42, U.S.C. §11049(4).

18. Propane is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.

19. Propane CAS # 74-98-6 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

20. Propane CAS # 74-98-6 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

21. During at least one period of time in calendar years 2002 and 2003, propane was present at the Facility in an amount equal to or greater than the minimum threshold level.

22. OSHA requires Respondent to prepare, or have available, an MSDS for propane.

23. Respondent was required to submit to the SERC, LEPC and fire department on or before March 1, 2003 for calendar year 2002, and on or before March 1, 2004 for calendar year 2003, an MSDS for propane or a list containing propane.

24. At all times relevant to this CAFO, the Michigan State Emergency Response Commission was the state emergency response commission (SERC) for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

25. At all times relevant to this CAFO, the St. Clair County Emergency Management was the local emergency planning committee (LEPC) for St. Clair County, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

26. At all times relevant to this CAFO, the Mussey Township Fire Department was the fire department with jurisdiction over the Facility.

27. As of October 1, 2007 Respondent had not submitted to the SERC, LEPC, and Mussey Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane for calendar years 2002 and 2003.

28. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2003 for calendar year

2002, and by March 1, 2004 for calendar year 2003, is a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

29. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2003, for calendar year 2002 and by March 1, 2004, for calendar year 2003, is a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

30. Each day Respondent failed to submit to the Mussey Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2003, for calendar year 2002, and by March 1, 2004, for calendar year 2003, is a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

31. In consideration of Respondent's cooperation and willingness to settle, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$3,000.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,000 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Financial Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the case title of this matter: Amerigas Propane, L.P., 14900 Downey Road, Capac, Michigan 48014, the docket number of this CAFO and the billing document number

EPCRA-05-2008-0011

33. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing, ABA Number 021030004 for account number 68010727, USEPA. The wire payment must have the billing document number 2750844E011.

34. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Ginger Jager , (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Jose C. de Leon , (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not timely pay the civil penalty, U.S. EPA may bring and action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA

will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

General Provisions

38. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws, and regulations.

41. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for EPCRA and CERCLA 103.

42. The terms of this CAFO bind Respondent and its successors, and assigns.

43. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

45. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Amerigas Propane, L.P., 14900 Downey Road, Capac, Michigan 48014
Consent Agreement and Final Order
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U.S. Environmental Protection Agency, Complainant

Date: 4/10/08

By: *Linda M. Nachowicz*
Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division
U.S. EPA, Region 5

Date: 4-10-08

By: *Richard C. Karl*
Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5

Amerigas Propane, L.P., Respondent

by its general partner, Amerigas Propane, Inc.

Date: 3/28/08

By: *Randy Hannigan* jsk
RANDY HANNIGAN
(Printed Name)
Vice President - Operations
(Printed Title)

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Consent Agreement and Final Order
Docket No. EPCRA-05-2008-0011

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 4/15/08

By: 
Mary A. Gade
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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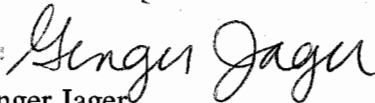
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Certificate of Service

I, Ginger Jager, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, Docket Number EPCRA-05-2008-0011 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Amerigas Propane, L.P. by placing them in the custody of the United States Postal Service addressed as follows:

Jean S. Konowalczyk
Amerigas Propane, L.P.
PO Box 965
Valley Forge, PA 19482

on the 16th day of April, 2008.


Ginger Jager
U.S. Environmental Protection Agency
Region 5

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