

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Jeffrey Kopf  
Name of Case Attorney

11/20/08  
Date

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

Case Docket Number CWA-01-2008-0108

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:

Inergy Propane  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Dollar Amount of Receivable \$ 157,500 Due Date: 12/18/08

SEP due? Yes \_\_\_\_\_ No \_\_\_\_\_ Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ 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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

1 Congress Street  
Suite 1100 - SEL  
Boston, MA 02114-2023

RECEIVED

2008 NOV 19 A 9:45

November 19, 2008

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
One Congress Street  
Suite 1100, Mail Code RAA  
Boston, MA 02114-2023

BY HAND

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

Re: In the Matter of: Inergy Propane, LLC, CWA-01-2008-0108  
Filing of Consent Agreement and Final Order

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order both initiating and settling the matter referenced above.

Pursuant to EPA Order Classification No. 2551.1A dated June 7, 2006, the Regional Hearing Clerk (RHC) shall send a copy of the CAFO in any Clean Water Act (CWA) case assessing a penalty under the authority of Section 311 of the CWA to:

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

In addition, the RHC must pass along the name and address of the regional attorney responsible for any collection recommendation if the civil debt becomes delinquent. For this case, the responsible attorney is:

Jeffrey Kopf  
Senior Enforcement Counsel  
EPA Region 1  
1 Congress St., Suite 1100 (SEL)  
Boston, MA 02114-2023  
Tel: 617-918-1796

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

2008 NOV 19 A 9:45

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

\_\_\_\_\_) )  
IN THE MATTER OF ) )  
) )  
INERGY PROPANE, LLC ) )  
) )  
) )  
) )  
) )  
) )  
Respondent ) )  
\_\_\_\_\_) )

Docket No. CWA-01-2008-0108

**CONSENT AGREEMENT AND  
FINAL ORDER FOR CLASS II CIVIL  
PENALTY UNDER SECTION  
311(b)(6)(B)(ii) OF THE  
CLEAN WATER ACT**

The Regional Administrator of the United States Environmental Protection Agency, Region I (“EPA”), issues this Consent Agreement and Final Order (“CAFO”) to Inergy Propane, LLC (“Respondent”). EPA alleges that Respondent violated Section 311(j) of the Clean Water Act (the “Act”). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Part 22”).

## **I. DESCRIPTION OF VIOLATIONS**

1. EPA alleges that Respondent failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

### **Statutory and Regulatory Authority**

2. EPA takes this action under the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for violation of Section 311(j) of the Act, 33 U.S.C. §1321(j).

### **General Allegations**

3. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges . . . .”

4. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

5. Under 40 C.F.R. § 112.3 an owner or operator of an onshore facility subject to the Oil Pollution Prevention regulations must prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan in writing in accordance with 40 C.F.R. § 112.7, and fully implement such plan.

6. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).

7. Respondent is or was an “operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the following four facilities (“Facilities”):

- 478 Main Street, Hampstead, New Hampshire
- 3 Central Court, Derry, New Hampshire
- 8 Main Street, Atkinson, New Hampshire
- 436 Route 125, Brentwood, New Hampshire

The Facilities are not owned by Respondent. Respondent ceased operations at the Hampstead and Derry facilities in December 2007, and currently operates only at the Atkinson and Brentwood facilities.

8. Respondent is or was engaged in storing, using, and consuming “oil” or oil products located at the Facilities within the meaning of 40 C.F.R. § 112.2.

9. Each of the Facilities has or had an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

10. Each of the Facilities is or was an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

11. Each of the Facilities is or was a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

12. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

13. Based on the above, each of the Facilities is or was therefore a non-transportation-related onshore facility which, due to its location and in the event of a significant uncontained release, could reasonably be expected to discharge oil to a “navigable waters” of the United States or its adjoining shorelines in a harmful quantity.

14. Respondent is or was therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at each of the Facilities.

#### **Findings of Violation**

15. On June 26, 2007, an authorized EPA representative inspected the Facilities listed in Paragraph seven to determine their compliance with Section 311(j) of the Act, and in particular, the requirements of the Oil Pollution Prevention regulations.

16. On July 30, 2007, EPA sent a letter requesting information to Respondent regarding the Facilities described in Paragraph seven.

17. Based on the June 26, 2007 inspections, and on documents submitted by Respondent to EPA, EPA has determined that Respondent has failed to fully implement an SPCC plan for each of the Facilities in accordance with the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. § 112.3.

18. Respondent's failure to fully implement an SPCC plan for each of the Facilities violated 40 C.F.R. § 112.3. Respondent is in violation of these requirements for each day during the period it was required to prepare and implement a plan under 40 C.F.R. Part 112, until it fully implements a written, Professional-Engineer certified, SPCC Plan for each of the Facilities, or until it no longer owns or operates the Facilities.

19. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues.

## II. CONSENT AGREEMENT

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 CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this action hereby stipulate as follows:

20. Respondent admits the jurisdictional allegations in Section I above.

21. Respondent neither admits nor denies the specific factual allegations contained in Section I above.

### **Waiver of Rights**

22. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

### **Penalty**

23. Complainant proposes, and Respondent consents to, the assessment of a total combined civil penalty of ONE-HUNDRED FIFTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS (\$157,500) for all four Facilities.

### **Payment Terms**

24. Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

25. Within 30 days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency" and referencing the title and docket number of the action ("In the Matter of Inergy Propane LLC, CWA-01-2008-0108") and "Oil Spill Liability Trust Fund - 311" in the amount specified in Paragraph 23 to:

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

26. Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check to the following people:

CONSENT AGREEMENT AND FINAL ORDER  
Docket No. CWA-01-2008-0108 - Page 6

US EPA Region 1  
One Congress St., Suite 1100  
Boston, MA 02114-2023



Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. Environmental Protection Agency  
Region 1  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

and

Jeffrey Kopf  
Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

27. The proposed administrative civil penalty has been determined in accordance with Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, and Section 311(b)(8) of the Act. For purposes of determining the amount of any penalty to be assessed, Section 311(b)(8) requires EPA to take into account the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, if any, the economic impact of the penalty on the violator, and any other matters as justice may require. In developing the proposed settlement penalty in this CAFO, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the relevant factors identified at Section 311(b)(8) of the Act.

28. The penalty above represents a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

## **General Provisions**

29. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), a failure by the Respondent to pay the penalty assessed by this CAFO 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 date of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), 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 which 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.

30. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

31. EPA states that it has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.


32. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any

applicable injunctive or other equitable relief or criminal sanctions for any violation of law.  
Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability  
for federal civil penalties for the violations and facts stipulated to herein.

33. Except as described in paragraph 30 of the Consent Agreement, each party shall  
bear its own costs and attorney's fees in connection with the action resolved by this CAFO.


For INERGY PROPANE, LLC:

Date: 9/26/08

  
\_\_\_\_\_  
Theodore L. Jeffcoat  
Vice President, Retail Operations - East  
Inergy Propane, LLC

For U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 09/26/08


  
\_\_\_\_\_  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. EPA; Region I

### III. FINAL ORDER

34. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with 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,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

35. The Respondent is ordered to comply with the terms of the Consent Agreement. This Consent Order shall become effective upon filing.

Date: Nov. 18, 2008

  
\_\_\_\_\_  
Jill Metcalf  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

In the Matter of: Inergy Propane, LLC  
Docket No. CWA 01-2008-0108

**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:

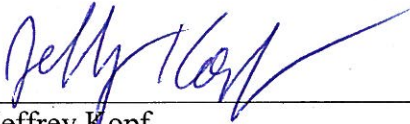
Original and one copy  
hand delivered:

Regional Hearing Clerk  
U.S. EPA, Region I  
1 Congress Street  
Suite 1100 (RAA)  
Boston, MA 02114-2023

Copy by certified mail,  
return receipt requested,

Kyle Foote  
Stinson Morrison Hecker, LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150

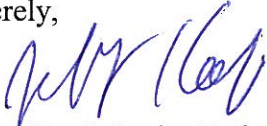
Date: Nov. 19 2008



Jeffrey Kopf  
Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
tel: (617) 918-1796  
fax: (617) 918-0796  
email: kopf.jeff@epa.gov

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey Kopf', is written over the typed name.

Jeffrey Kopf, Senior Enforcement Counsel  
EPA Region 1

Enclosure (CAFO)

cc: Kyle Foote, Stinson Morrison Hecker, LLP