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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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In the Matter of:	:	CONSENT AGREEMENT
	:	
Matheson Tri-Gas, Inc.	:	Proceedings Pursuant to Sections 112(r) and
150 Allen Road, Suite 302	:	113 of the Clean Air Act, 42 U.S.C.
Basking Ridge, New Jersey 07920,	:	§§ 7412(r) and 7413
	:	
Respondent.	:	Docket No.: CAA-03-2013-0101
	:	
Matheson Tri-Gas, Inc.	:	
1401 Stauffer Road	:	
Palm, Pennsylvania 18070,	:	
	:	
Facility.	:	

STATUTORY AUTHORITY

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division.

2. The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively as "CAFO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CAFO, agree to comply with the terms of this CAFO.

3. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

4. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and

correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

5. On June 20, 1996, EPA promulgated a final rule known as the chemical accident prevention provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management plan (“RMP”) that must be submitted to EPA. The RMP must include a hazard assessment to evaluate the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

6. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must develop and implement a risk management program, on the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or (3) the date on which the regulated substance is first present above a threshold quantity in a process.

7. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3717, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation that occurs after January 12, 2009.

GENERAL PROVISIONS

8. For the purposes of this proceeding, Matheson Tri-Gas Inc. (“Respondent”) admits to the jurisdictional allegations set forth in this Consent Agreement.

9. Respondent agrees not to contest EPA’s jurisdiction with respect to execution or enforcement of the CAFO.

10. For purposes of this proceeding, and with the exception of Paragraph 8 above, Respondent neither admits nor denies the factual allegations set forth below, but expressly waives its right to a hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

11. Respondent certifies by the signing of this Consent Agreement that, to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

12. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he

or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

13. This CAFO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. §7412(r), or any regulations promulgated thereunder.

14. This CAFO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CAFO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.

15. Each party to this action shall bear its own costs and attorney's fees.

FINDINGS OF FACT

16. Respondent is a company headquartered at 150 Allen Road in Basking Ridge, New Jersey.

17. Respondent is the owner of a natural gas production and distribution facility located at 1401 Stauffer Road in Palm, Pennsylvania ("Palm Facility").

18. The regulations at 40 C.F.R. § 68.3 define "stationary source," in part, as "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur."

19. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as "the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115."

20. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as "any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in 40 C.F.R. § 68.130."

21. The regulations at 40 C.F.R. § 68.3 define "process" as "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

22. The Respondent began operations at the Palm Facility on or about November 1, 2008. The Respondent submitted to EPA its initial risk management plan for the Palm Facility on or about July 22, 2010.

23. EPA conducted an inspection of the Palm Facility on July 19, 2011, to determine Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. §7412(r), and the risk management program regulations at 40 C.F.R. Part 68.

24. On October 14, 2011, EPA sent Respondent an information request under Section 114 of the CAA, 42 U.S.C. § 7414.

25. In its November 11, 2011 response to EPA's information request, Respondent provided EPA with a list of chemicals stored onsite at Respondent's Palm Facility from November 1, 2008 through November 11, 2011.

26. Respondent's list indicates that Respondent had present at its Palm Facility methane, propylene, and isobutane.

27. Methane, propylene, and isobutane are "regulated substances" pursuant to Section 112(r) of the CAA, and listed in 40 C.F.R § 68.130, each with a threshold quantity of 10,000 pounds.

28. Respondent's list indicates that Respondent had present at its Palm Facility quantities of methane, propylene, and isobutane in excess of 10,000 pounds beginning on November 7, 2008 and certain dates shortly thereafter.

29. Based on its inspection and documents subsequently obtained from the Respondent, EPA determined that the Respondent had present at its Palm Facility regulated substances in quantities that exceeded the threshold limits defined in 40 C.F.R. 68.130.

30. Based on its inspection of the Palm Facility and documents obtained from the Respondent, EPA determined that the Respondent violated the chemical accident prevention provisions by failing to submit an RMP at the time Respondent acquired the Facility, as required by 40 C.F.R. § 68.150.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

31. At all times relevant to this Consent Agreement, Respondent had present at its Palm Facility more than the threshold quantity of methane, propylene, and isobutane.

32. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

33. The Palm Facility is a "stationary source," as the term is defined at 40 C.F.R. § 68.3.

34. Respondent has been the owner or operator of a "stationary source," as the term is defined at 40 C.F.R. § 68.3, since November 2008.

35. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that exceeded threshold quantities of a regulated substance.

36. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, by failing to submit an RMP at the time Respondent acquired the Facility as required by 40 C.F.R. § 68.150.

37. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

38. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as set forth above, in the amount of **\$73,790**.

39. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

40. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the civil penalty of \$73,790 no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action.
- B. All checks shall be made payable to **United States Treasury**;
- C. All payments made by check and sent by regular mail shall be addressed to:

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

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire should read:
D 68010727 Environmental Protection Agency

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

41. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Lee M. Zarzecki (3RC41)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

42. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012)*.

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions of this CAFO shall result in the assessment of late payment charges, including interest beyond that required by this CAFO, penalties and/or administrative costs of handling delinquent debts.

44. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

45. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

46. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

47. Failure of Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

FOR MATHESON TRI-GAS, INC.

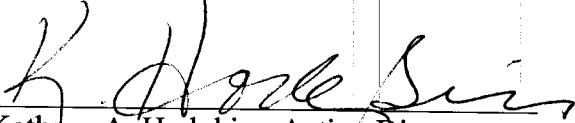

Signature

February 22, 2013
Date

Stephen Stroud
Print Name

Secretary
Title

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY


Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

3/11/2013
Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

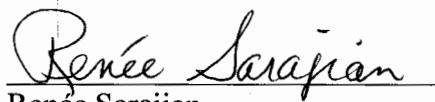
In the Matter of:	:	FINAL ORDER
	:	
Matheson Tri-Gas, Inc.	:	Proceedings Pursuant to Sections 112(r) and
150 Allen Road, Suite 302	:	113 of the Clean Air Act, 42 U.S.C.
Basking Ridge, New Jersey 07920,	:	§§ 7412(r) and 7413
	:	
Respondent.	:	Docket No.: CAA-03-2013-0101
	:	
Matheson Tri-Gas, Inc.	:	
1401 Stauffer Road	:	
Palm, Pennsylvania 19103,	:	
	:	
Facility.	:	
	:	

Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties 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. The Respondent is ORDERED to pay \$73,790 and otherwise comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date: 3/21/13



Renée Sarajian
Regional Judicial Officer/Presiding Officer