



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

DEC - 1 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jim Cantrell
Vice President & Associate General Counsel
Crestwood Equity Partners LP
Crestwood Midstream Partners LP
1125 17th Street, Suite 1575
Denver, Colorado 80202

Re: Crestwood Services LLC, Consent Agreement and Final Order.
Docket No. **CAA-05-2016-0006**

Dear Mr. Cantrell:

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 December 1, 2015. Please pay the civil penalty in the amount of **\$275,400** in the manner prescribed in paragraph(s) 55 and 56.

Please feel free to contact Greg Chomycia at 312-353-8217 if you have any questions regarding the enclosed documents. Please direct any legal questions to Kris Vezner, Associate Regional Counsel at 312-886-6827. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael E. Hans".

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Crestwood Services, LLC,)
f/k/a Inergy Propane, LLC,)
)
Seymour, Indiana,)
)
Respondent)
)
_____)

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Docket No. CAA-05-2016-0006

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.

3. Respondent is Crestwood Services LLC, f/k/a Inergy Services, LLC, a limited liability company doing business in the State of Indiana. Following the merger of Crestwood Midstream Partners LP and Inergy, L.P. in October 2013, the name of Inergy Services, LLC was changed to Crestwood Services LLC.

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).

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. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent 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 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), required EPA's Administrator (Administrator), to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances.

10. On June 20, 1996, EPA promulgated regulations implementing Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). These regulations are commonly known as the Risk Management Program (Program) regulations and are codified at 40 C.F.R. Part 68.

11. The Program regulations seek to prevent accidental releases of regulated substances and to minimize the consequences of releases that do occur, by requiring owners and operators of certain stationary sources to, among other things: (1) develop and implement a management

system to oversee the implementation of Program elements; (2) develop and implement a Program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program; and (3) submit to EPA a risk management plan (RMP) describing the Program for the source. *See* 40 C.F.R. Part 68, Subparts A-G.

12. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. § 7412(r)(3) and (5), required the Administrator to promulgate a list of regulated substances including the threshold quantity of each substance which is known to cause or may be reasonably anticipated to cause death, injury or serious effects to human health. EPA subsequently promulgated 40 C.F.R. Part 68, Subpart F, listing the regulated substances and their threshold quantities. *See* 40 C.F.R § 68.130, Table 1.

13. The Program regulations apply to the owner and operator of any “stationary source” that has more than a “threshold quantity” of a “regulated substance” in a “process.” *See* 40 C.F.R. § 68.10(a).

14. A “stationary source” is any building, structure, facility, or installation which emits or may emit any air pollutant. *See* Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3).

15. A “threshold quantity” is the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R § 68.130, and determined to be present at the stationary source as specified in 40 C.F.R § 68.115. *See* 40 C.F.R. § 68.3.

16. A “regulated substance” is any substance listed in 40 C.F.R § 68.130, Table 1. *See* 40 C.F.R. § 68.3.

17. A flammable mixture is a “regulated substance” under the Program regulations as defined in 40 C.F.R. § 68.115 and 40 C.F.R. § 68.3

18. Propane is a “regulated substance” under the Program regulations and as defined in 40 C.F.R. § 68.3.

19. The “threshold quantity” for propane and flammable mixtures under the Program regulations is 10,000 pounds per year. *See* 40 C.F.R. § 68.130, Table 1.

20. A “process” is any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such a substance. 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. *See* 40 C.F.R. § 68.3.

General Risk Management Program Requirements

21. A “covered process” under the Program regulations is a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115. *See* 40 C.F.R. § 68.3.

22. Pursuant to 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68.

23. 40 C.F.R. § 68.12(a) requires an owner or operator of a facility subject to the Program regulations to develop and implement in accordance with the provisions of 40 C.F.R. §§ 68.150-68.185, an RMP for preventing accidental releases to the air and minimizing the consequences of releases that do occur.

24. 40 C.F.R. § 68.150(a)-(b) require an owner or operator of a facility subject to the Program regulations to submit to EPA its RMP by no later than the latest of the following dates:

- a. June 21, 1999;
- b. three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or

- c. the date on which a regulated substance is first present in more than a threshold quantity in a process.

25. 40 C.F.R. § 68.150(d) requires an owner or operator of a facility subject to the Program regulations to update and correct its RMP in accordance with the provisions of 40 C.F.R. §§ 68.190 and 68.195.

26. 40 C.F.R. § 68.190(b) requires, at a minimum, that an owner or operator of a facility subject to the Program regulations revise and update its RMP by no later than the latest of:

- a. Section 68.190(b)(1): once every five years from the date of its initial submission; or the most recent update required by 40 C.F.R. § 68.190(b)(2)-(b)(7);
- b. Section 68.190(b)(2): no later than three years after a newly regulated substance is first listed by EPA;
- c. Section 68.190(b)(3): no later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;
- d. Section 68.190(b)(4): no later than the date on which a regulated substance is first present above a threshold quantity in a new process;
- e. Section 68.190(b)(5): within six months of a change that requires a revised process hazard analysis (PHA) or hazard review;
- f. Section 68.190(b)(6): within six months of a change that requires a revised offsite consequence analysis provided in 40 C.F.R. § 68.36; or
- g. Section 68.190(b)(7): within six months of a change that alters the program level that applied to any covered process.

27. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

Additional Program 3 Requirements

28. The Program regulations separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. All covered processes must fulfill additional requirements applicable to one of these three tiers of covered processes. See 40 C.F.R. § 68.10.

29. Pursuant to 40 C.F.R. § 68.10(c), Program 3 applies to all processes which do not meet the requirements of Program 1 eligibility set forth at 40 C.F.R. § 68.10(b), and if either one of the following conditions are met:

- a. The process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or
- b. The process is subject to the Occupational Safety Health Administration (OSHA) process safety management standard set forth at 39 C.F.R. § 1910.199.

30. 40 C.F.R. § 68.12(d) requires the owner or operator of a stationary source with a process subject to the Program 3 Program requirements to fulfill certain requirements, including, but not limited to:

- a. develop and implement a management system as provided at 40 C.F.R. § 68.15;
- b. conduct a hazard assessment as provided at 40 C.F.R. §§ 68.20 through 68.42;
- c. implement the prevention requirements set forth at 40 C.F.R. §§ 68.65 through 68.87;
- d. develop and implement the emergency response requirements set forth in 40 C.F.R. §§ 68.90 and 68.95; and include in its submitted RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

31. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 provide that the Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred from January 12, 2009 through December 6, 2013; and a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for each violation of Section 112(r) of the Act that occurred after December 6, 2013.

32. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the periods of violations alleged in this complaint.

Factual Allegations and Alleged Violations

34. At all times relevant to this CAFO, Respondent was a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

35. At all times relevant to this CAFO, Respondent owned and operated a facility at 10523 East County Road 975 North, Seymour, Indiana, (Facility).

36. At all times relevant to this CAFO, the Facility consisted of buildings, equipment, structures, and other stationary items which were located on a single site or on contiguous or adjacent sites, and which were owned or operated by the same person.

37. At all times relevant to this CAFO, for purposes of the requirements of 40 C.F.R. Part 68, Respondent was the "owner or operator" of the Facility, as that term is defined at Section 112(a)(9) of the Act.

38. At all times relevant to this CAFO, the Facility was a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

39. Beginning prior to 1999, and at all times relevant to this CAFO, Respondent used, stored, handled, and moved, the regulated substance propane at the Facility in amounts over the threshold quantity of 10,000 pounds per year.

40. At all times relevant to this CAFO, Respondent's use, storage, handling, and movement of propane at the Facility was a "process," as that term is defined at 40 C.F.R. § 68.3.

41. At all times relevant to this CAFO, Respondent's use, storage, handling, and movement of propane at the Facility was a "covered process" as that term is defined at 40 C.F.R. § 68.3.

42. At all times relevant to this CAFO, Respondent's propane process at the Facility did not meet the Program 1 requirements of 40 C.F.R. § 68.10(b), and was subject to the OSHA Process Safety Management Standard.

43. At all times relevant to this CAFO, Respondent's propane process at the Facility was a process subject to the Program 3 Risk Management Program requirements.

44. On or about February 17, 2000, under Section 112(r) of the Act, 42 U.S.C. § 7412, and the Program regulations, Respondent submitted to EPA its initial RMP for the process at the Facility.

45. On or about May 17, 2005, under Section 112(r) of the Act, 42 U.S.C. § 7412, and the Program regulations, Respondent submitted to EPA an RMP for the Facility.

46. On or about July 7, 2011, U.S. EPA issued an Information Request to Respondent to determine whether the Facility was in operation and whether it continued to use regulated substances.

47. On or about February 22, 2013, under Section 112(r) of the Act, 42 U.S.C. § 7412, and the Program regulations, Respondent submitted to EPA an RMP for the Facility.

48. On or about March 14, 2013, authorized representatives of EPA conducted an inspection at the Facility to determine the Facility's compliance with the Act and Program regulations.

49. On or about January 17, 2014, under Section 112(r) of the Act, 42 U.S.C. § 7412, and the Program regulations, Respondent submitted to EPA an RMP for the Facility.

50. According to the Facility's January 17, 2014 RMP, the Facility:
- a. falls within NAICS Code 42471, as Petroleum Bulk Stations and Terminals;
 - b. used "propane" CAS No. 74-98-6 as a process chemical during its operations;
 - c. holds up to 79,965,900 lbs. of propane;
 - d. used "flammable mixture" CAS No. 00-11-11 as a process during its operations;
and
 - e. holds up to 4,315,620 pounds of flammable mixture.

51. Based on information including but not limited to the March 14, 2013 inspection, EPA has identified the following alleged violations of the Act and Program regulations by

Respondent:

- a. Failure to estimate the greatest distance-to-endpoint for the Facility's worst-case scenario, as required under 40 C.F.R. § 68.25(a)(2)(ii).
- b. Failure to use an acceptable population data source when calculating the residential population affected by the worst-case scenario, as required under 40 C.F.R. § 68.30(c).
- c. Failure to maintain a description of the alternate release scenario, as required under 40 C.F.R. § 68.39(b).
- d. Failure to document the estimated release rate in an alternate scenario, as required under 40 C.F.R. § 68.39(c).
- e. Failure to document the methodology used to determine the distance-to-endpoint for the alternate release scenario, as required under 40 C.F.R. § 68.39(d).
- f. Failure to document the data source for population and environmental receptors for the worst-case and alternate release, as required under 40 C.F.R. § 68.39(e).

- g. Failure to create a block flow diagram in the Process Safety Information (PSI), as required under 40 C.F.R. § 68.65(c)(1)(ii).
- h. Failure to include an evaluation of the consequences of deviation from safe upper and lower limits in the PSI, as required under 40 C.F.R. § 68.65(c)(1)(v).
- i. Failure to include electrical classification in the PSI, as required under 40 C.F.R. § 68.65(d)(1)(iii).
- j. Failure to include information pertaining to safety systems in the PSI, as required under 40 C.F.R. § 68.65(d)(1)(viii).
- k. Failure to resolve recommendations and findings from the Process Hazard Analysis in a timely manner, as required under 40 C.F.R. § 68.67(e).
- l. Failure to develop and implement a procedure for the initial startup operating phase, as required under 40 C.F.R. § 68.69(a)(1)(i).
- m. Failure to develop and implement operating procedures for the recovery tank, as required under 40 C.F.R. § 68.69(a)(1)(ii).
- n. Failure to include conditions under which emergency shutdown is required in the emergency shutdown procedures, as required under 40 C.F.R. § 68.69(a)(1)(iv).
- o. Failure to certify operating procedures are current and accurate on an annual basis, as required under 40 C.F.R. § 68.69(c).
- p. Failure to establish written procedures to maintain the ongoing integrity of process equipment, as required under 40 C.F.R. § 68.73(b).
- q. Failure to implement the written management of change procedures, as required under 40 C.F.R. § 68.75(a).
- r. Failure to perform an audit of the prevention program, as required under

40 C.F.R. § 68.79(a).

- s. Failure to promptly determine and document an appropriate response to each of the findings of a compliance audit, as required under 40 C.F.R. § 68.79(d).
- t. Failure to obtain and evaluate information regarding a contractor's safety performance and programs, as required under 40 C.F.R. § 68.87(b)(1).
- u. Failure to identify the Facility's correct program level in the Facility's RMP registration information, as required under 40 C.F.R. § 68.160(b)(7).
- v. Failure to update the RMP at least 5 years after the most recent RMP submission, as required under 40 C.F.R. § 68.190(b)(1).
- w. Failure to respond to an information request, as required by Section 114 of the Act, 42 U.S.C. § 7414.

52. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

53. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

54. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$275,400.00.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$275,400.00 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "Crestwood Services, LLC" the docket number of this CAFO and the billing document number.

56. A transmittal letter stating Respondent's name, 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:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Greg Chomycia, (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kris Vezner, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

58. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

59. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

60. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

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

62. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 60, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

63. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

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

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


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

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


CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Crestwood Services, LLC
Docket No. CAA-05-2016-0006

Crestwood Services, LLC, Respondent

Date: 11-5-15 By: 
William C. Gautraux
President, Supply & Logistics Group
Crestwood Services, LLC *gwa*

United States Environmental Protection Agency, Complainant

Date: 11/20/2015 
Richard C. Karl, Director
Superfund Division *rc*

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Crestwood Services, LLC
Docket No. CAA-05-2016-0006

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-25-2015
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: Crestwood Services, LLC, f/k/a Inergy Propane, LLC

Docket Number: **CAA-05-2016-0006**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on December 1, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Jim Cantrell
Vice President & Associate General Counsel
Crestwood Equity Partners LP
Crestwood Midstream Partners LP
1125 17th Street, Suite 1575
Denver, Colorado 80202

Copy by E-mail to
Attorney for Complainant:

Kris Vezner
vezner.kris@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: December 1, 2015

LaDawn Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2640 7483