



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 09 2009

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

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

Re: Inergy Propane LLC d/b/a Silgas, Seymour, Indiana  
Consent Agreement and Final Order - Docket No. **EPCRA-05-2010-0005**

Dear Mr. Foote:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The ~~US~~ EPA has filed the other original CAFO with the Regional Hearing Clerk on NOV 09 2009.

Please pay the EPCRA civil penalty in the amount of \$12,031 in the manner prescribed in paragraphs 34 and 35, and reference you check with the billing document number **2751044E007** and the docket number **EPCRA-05-2010-0005**.

Your payment is due on DEC 09 2009.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
 )  
Inergy Propane, LLC, ) DOCKET NO.: EPCRA-05-2010-0005  
d/b/a Silgas, )  
Kansas City, Missouri, ) PROCEEDING TO ASSESS A CIVIL  
 ) PENALTY UNDER SECTION 325(c)  
 ) OF THE EMERGENCY PLANNING AND  
RESPONDENT. ) COMMUNITY RIGHT-TO-KNOW ACT  
\_\_\_\_\_ )

RECEIVED

NOV 09 2009

CONSENT AGREEMENT AND FINAL ORDER

REGIONAL HEARING CLERK  
USEPA  
REGION 5

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(2), 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.

2. Complainant is, by lawful delegation, the Chief, Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Inergy Propane, LLC, a limited liability corporation doing business in the State of Indiana as Silgas.

4. According to 40 C.F.R. § 22.13(b), 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).

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 the terms of this CAFO, including the assessment of the civil penalty specified below.

**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 this 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 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 prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or 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.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting under this section could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

12. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty to \$32,500 per day of violation for violations occurring after March 15, 2004.

#### **ALLEGATIONS OF LIABILITY**

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 Seymour Terminal facility located at 10523 East County Road 975 North, Seymour, Indiana (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 (CAS # 74-98-6) is explosive and highly flammable. Additionally, direct contact with liquid or pressurized states of propane can cause serious freeze burns to exposed flesh.

19. Propane is a health hazard and is thus a hazardous chemical under 29 C.F.R. § 1910.1200(c) and section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

20. Propane has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

21. During at least one period of time in calendar year 2005, propane was present at the facility in an amount equal to or greater than 10,000 pounds.

22. During at least one period of time in calendar year 2006, propane was present at the facility in an amount equal to or greater than 10,000 pounds.

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

24. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2006, an Emergency and Hazardous Chemical Inventory Form including propane stored at the facility during calendar year 2005.

25. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2007, an

Emergency and Hazardous Chemical Inventory Form including propane stored at the facility during calendar year 2006.

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

27. At all times relevant to this Complaint, the Jackson County Emergency Planning Commission was the local emergency planning committee (LEPC) for Seymour, Indiana, under section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

28. At all times relevant to this Complaint, the Seymour (Indiana) Fire Department was the fire department with jurisdiction over the facility.

29. Respondent submitted to the SERC, LEPC, and Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane on March 8, 2008, for calendar year 2005.

30. Respondent submitted to the SERC, LEPC, and Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane on March 8, for calendar year 2006.

31. Each day Respondent failed to submit to the SERC, LEPC or Fire Department a completed Emergency and Hazardous

Chemical Inventory Form including propane by March 1, 2006, for calendar year 2005 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

32. Each day Respondent failed to submit to the SERC, LEPC or Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2007, for calendar year 2006 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**CIVIL PENALTY**

33. Considering Respondent's cooperation in quickly resolving this matter and Respondent's agreement to perform the supplemental environmental project described below, U.S. EPA has determined that an appropriate civil penalty to settle this action is **\$12,031**.

34. Within 30 days after the effective date of this CAFO, Respondent must pay the \$12,031 civil penalty by sending a cashier's or certified check, 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 the following: the case caption, the docket number of this CAFO and the billing document number \_

**2751044E007**



35. A transmittal letter, stating Respondent's name, 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Ruth McNamara, (SC-6J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Robert S. Guenther, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

37. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 50, below, 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. Respondent

agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest on any amount overdue under this CAFO.

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 also 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 6 percent per year penalty on any principal amount 90 days past due.

#### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

39. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the likelihood or extent of explosions or releases at Respondent's propane storage facilities in Indiana.

40. At its Seymour, Indiana, facility, and at various other Inergy facilities throughout Indiana, Respondent must complete the following SEPs as follows within six months of the filing of this CAFO:

- a. Respondent will purchase and install four emergency shut-down controls at locations at the Seymour facility as indicated by the attached map;

b. Respondent will purchase and install 20 collision protection bollards at the Seymour facility to prevent accidental collisions and damage to fuel storage tanks and dispensing systems, also as indicated by the attached map;

c. Respondent will purchase and install forty "smart hoses," or hoses that can quickly detect when propane fuel delivery is malfunctioning and cut off flow when necessary; four of these "smart hoses" will be installed at the Seymour facility, and the other 36 "smart hoses" will be installed at various Inergy facilities throughout Indiana; and

d. Respondent will purchase and deliver radio communication devices to the Seymour, Indiana, Fire Department, including six 800 megahertz portable radios and two 800 megahertz radio base stations.

41. Respondent must spend at least \$44,088 on the projects listed in the previous paragraph.

42. Respondent must continuously use or operate the equipment installed as the SEPs (other than the communication equipment purchased for the Seymour Fire Department) for 5 years following its installation.

43. Respondent certifies that it is not required to perform or develop the SEPs described above by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has neither received nor is negotiating to receive credit for the SEPs in any other enforcement action.

44. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

45. Respondent must submit a SEP completion report to U.S. EPA by seven months following the filing of this CAFO. This report must contain the following information:

- a. A detailed description of the SEP as completed;
- b. A description of any operating problems and the actions taken to correct the problems;
- c. An itemization of costs of goods and services used to complete the SEPs documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. A certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

46. Respondent must submit all notices and reports required by this CAFO by first class mail to Ms. McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 35, above.

47. In each report Respondent submits as provided by this CAFO, it must certify that the report is true and

complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

48. Following receipt of the SEP completion report described in paragraph 45, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEPs and the SEP report;
- b. There are deficiencies in the SEPs as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 50 below.

49. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If

Respondent does not complete the SEPs as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 50, below.

50. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 41, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEPs and the amount set forth in paragraph 41.
- b. If Respondent has completed the SEP, but the SEPs are not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEPs, Respondent must pay a stipulated penalty of \$5,000 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 40 for implementing the SEPs or fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Day Per Violation</u>	<u>Period of Noncompliance</u>
\$100	Days 1 - 14
\$200	Days 15 - 30
\$500	Day 31 forward

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

51. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

52. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 33 - 38, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

53. Any public statement Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of the Emergency Preparedness and Community Right-to-know Act."

54. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **GENERAL PROVISIONS**

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

56. 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.

57. Respondent certifies that it is complying with section 312 of EPCRA, 42 U.S.C. § 11022.

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

59. This CAFO is a "final order" for purposes of U.S. EPA's enforcement response policy for section 312 of EPCRA.

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

61. Each person signing this consent agreement 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.


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



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

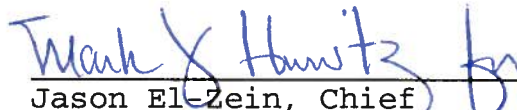
**Inergy Propane, LLC, d/b/a Silgas, Respondent**

10-1-09  
Date

  
\_\_\_\_\_  
Richard C. Kreul,  
Vice-President,  
Inergy Propane, LLC

**U.S. Environmental Protection Agency, Complainant**

11/03/09  
Date

  
\_\_\_\_\_  
Jason El-Zein, Chief  
Emergency Response Branch 1  
Superfund Division

11-4-09  
Date

  
\_\_\_\_\_  
Richard C. Karl, Director  
Superfund Division

In the Matter of:  
Inergy Propane, LLC, d/b/a Silgas  
Seymour, Indiana  
Docket No: EPCRA-05-2010-0005

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USEPA  
REGION 5

**FINAL ORDER**

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

Date: 11-6-09

By: \_\_\_\_\_

  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency - Region 5

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

NOV 09 2009

OFFICE OF REGIONAL  
COUNSEL

In the Matter of:  
Inergy Propane LLC d/b/a Silgas, Seymour, Indiana  
Docket No. **EPCRA-05-2010-0005**

**RECEIVED**  
NOV 09 2009  
REGIONAL HEARING CLERK  
USEPA  
REGION 5

**Certificate of Service**

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **EPCRA-05-2010-0005** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Inergy Propane LLC d/b/a/Silgas' Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Kyle E. Foote  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, Missouri 64016-2150

on the 9 day of November, 2009

Ruth McNamara

Ruth McNamara  
U.S. Environmental Protection Agency  
Region 5