



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2009 AUG 27 PM 1:11

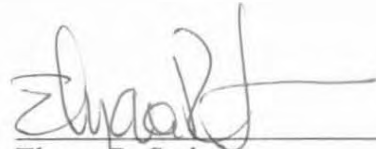
FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2009-0030

IN THE MATTER OF:	)	
	)	
<b>CHS, INC.</b>	)	
Denton, MT	)	<b>FINAL ORDER</b>
	)	
<b>RESPONDENT</b>	)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 27<sup>th</sup> DAY OF August, 2009.

  
 \_\_\_\_\_  
 Elyana R. Sutin  
 Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 AUG 27 PM 1:11

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

CHS, Inc. )  
Denton, Montana )

Respondent )

**EXPEDITED SETTLEMENT AGREEMENT**

(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

**DOCKET NO. : CAA-08-2009-0030**

This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by CHS, Inc. - Denton (Respondent) pursuant to § 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). The EPA and the U.S. Department of Justice have determined, pursuant to § 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On May 21, 2009, an authorized representative of the EPA conducted a compliance inspection of the CHS, Inc. - Denton facility, located at 200 Elevator Road in Denton, Montana, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under § 112(r) of the Act. The EPA found that the facility had violated regulations implementing § 112(r) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 2 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment).

SETTLEMENT

In consideration of Respondent's facility service size, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$780. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
2. Respondent waives its rights to a hearing afforded by § 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to the EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and attorney's fees, if any.
4. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$780. **The payment shall reference the name and docket number of this case** and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express  
ABA: 051036706  
Account Number: 310006  
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

[www.PAY.GOV](http://www.PAY.GOV)

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk  
U.S. EPA, Region 8  
1595 Wynkoop Street [8RC]  
Denver, Colorado 80202-1129

and

David Cobb  
EPCRA/RMP Enforcement Coordinator  
U.S. EPA, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Once Respondent receives a copy of the completely signed ESA, a copy of the Final Order issued by the Regional Judicial Officer in this matter, and Respondent pays in full the penalty assessment described above, then the EPA agrees to take no further civil action against the Respondent for any violations of requirements contained in the Risk Management Plan Penalty Checklist that may have occurred on or before May 21, 2009. The EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to the EPA's ability to file an enforcement action for the violations identified herein.

In addition, if Respondent fails to comply with the provisions of this ESA, by either 1) failing to timely submit the above-referenced payment or 2) by failing to correct the violations no later than 60 days from the date the ESA is signed by the Respondent, the Respondent agrees

that this agreement shall become null and void, and that the EPA may file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

**CHS, Inc. - Denton Expedited Settlement Agreement**

FOR RESPONDENT:

\_\_\_\_\_ Date: 8/14/09

Name (print): KEITH SCUMMACKER

Title (print): General Manager

**CHS, Inc. - Denton**

FOR COMPLAINANT:

Eddie A. Sierra Date: 8/24/2009

Eddie A. Sierra, Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice

**RMP PROGRAM LEVEL 2 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: **CHS, Inc. – Denton (aka Central Montana Co-op) – Denton, Montana**

**INSPECTION DATE: 5/21/2009**

<b>SECTION C: PREVENTION PROGRAM</b>	<b>PENALTY</b>
<b>Prevention Program – Process Hazard Review [68.50]</b>	
Has the owner or operator conducted a review of hazards associated with regulated substances, processes, and procedures [68.50(a)] and documented results of the review? [68.50(c)] <b>No. There was no documented hazard review on file.</b>	<p><b>450</b></p> <p><b>150</b></p>
Has the owner or operator updated the hazard review at least once every five years or whenever major change in processes has occurred? [68.50(d)] <b>No. There were no documented hazard reviews at the time of this inspection.</b>	<b>750</b>
<b>Prevention Program – Compliance Audits [68.58]</b>	
Has the owner or operator certified that compliance audits are conducted at least every three years to verify that procedure and practices are adequate and are being followed [68.58(a)] and developed a report of audit findings? [68.58(c)] <b>No. There were no compliance audits on file during the time of the inspection.</b>	<p><b>300</b></p> <p><b>150</b></p>
Has the owner or operator retained two most recent compliance audit reports? [68.58(e)] <b>No. At the time of the inspection, there was no documentation supporting that the audits had been done.</b>	<b>150</b>
<b>Risk Management Plan – Updates [68.190]</b>	
Has the owner or operator de-registered processes within six months that are no longer subject to RMP regulations? <b>No. CHS purchased Central Montana Co-op in 2001 and the new ownership change in the RMP database was not submitted. As a result, the facility now has two RMPs listed in the database (with two different ID numbers).</b>	<b>No penalty</b>
<ol style="list-style-type: none"> <li>1. Central Montana Co-op RMP (#1000 0016 7106)</li> <li>2. CHS, Inc. – Denton, facility RMP (#1000 0018 3259)</li> </ol> <p><b>CHS needs to correct the RMP data base information to reflect current ownership and eliminate the old RMP data for this location.</b></p>	
<b>BASE PENALTY</b>	<b>\$1950</b>

**Recommendations:****Train Personnel at the CHS-Denton facility on the Corporate RMP Manual/Responsibilities**

CHS has developed an RMP manual for their countrywide operations using anhydrous ammonia. The manual (dated 2009) was reviewed during the inspection. The manual generically covers all elements of Program Level 2 for ammonia operations. In most cases, this is sufficient to satisfy 40 CFR part 68. However, each covered facility must identify any aspect or operation of the covered process which may differ from the standard presented or not included in the manual. It was evident during the inspection that no training on the manual and its implementation has been provided. It is recommended that the corporate official responsible for implementation of the Risk Management Plan visit the Denton facility to observe the operation and provide training on the RMP manual.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**EXPEDITED SETTLEMENT PENALTY MATRIX**  
**CHS Inc. – Denton (aka Central Montana Co-op)**

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR  
VIOLATIONS FOUND DURING RMP INSPECTIONS

<i>(Amt of Chemical in process) x (Threshold Quantity)</i>		<b>1-5*</b>	<b>5-10*</b>	<b>&gt;10*</b>
<b># of Employees</b>	1-5	.1	.15	.3
	6-20	.15	.3	.4
	21-50	.3	.4	.6
	51-100	.4	.6	.7
	>100	.6	.7	1

\*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process

**PROPOSED PENALTY WORKSHEET**

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.



**Example:**

XYZ Facility has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.

Calculation of Adjusted Penalty

1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.

2<sup>nd</sup> Use the Adjusted Penalty formula

$$\begin{aligned} \text{Adjusted Penalty} &= \$4700 (\text{Unadjusted Penalty}) \times 0.4 (\text{Size-Threshold Multiplier}) \\ \text{Adjusted Penalty} &= \$1880 \end{aligned}$$

3<sup>rd</sup> An Adjusted Penalty of \$1880 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

Calculation for Adjusted Penalty – CHS Inc. – Denton (aka Central Montana Co-op)

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$780 = \$1,950 \times .4^*$$

\* # of employees is 8. At least one covered chemical exceeds the listed threshold value by 10 times.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED CONSENT AGREEMENT/FINAL ORDER** in the matter of **CHS, INC.**; **DOCKET NO.: CAA-08-2009-0030** was filed with the Regional Hearing Clerk on August 27, 2009.

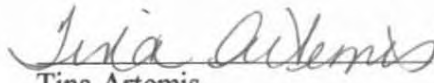
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 27, 2009, to:

Russ Allen, Location Manager  
CHS, Inc. - Denton  
P.O. Box 955, 200 Elevator Road  
Denton, MT 59430

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

August 27, 2009

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

