



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 JUN -1 AM 10:06

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DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0015

IN THE MATTER OF:)	
)	
CHS, INC – WEST FARGO)	FINAL ORDER
West Fargo, North Dakota)	
)	
RESPONDENT)	

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 1st DAY OF June, 2011.

Elyana R. Suth
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 JUN -1 AM 10: 06

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
CHS, Inc.-West Fargo) **EXPEDITED SETTLEMENT AGREEMENT**
West Fargo, North Dakota)
)
) (COMBINED COMPLAINT AND
) (CONSENT AGREEMENT)
Respondent)
_____) **DOCKET NO. : CAA-08-2011-0015**

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 the CHS, Inc.-West Fargo (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 October 28, 2010, an authorized representative of the EPA conducted a compliance inspection of the CHS, Inc.-West Fargo facility, located at 202 12th Avenue NE in Fargo, North Dakota 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 \$900. 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 \$900. **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

SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727
Environmental Protection Agency "

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

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. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

David Cobb
EPCRA/RMP Enforcement Coordinator
US 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 October 28, 2010. 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 Respondent fails to return the signed original ESA by the stated deadline, fails to timely submit the above-referenced payment, or fails to correct the violations no later than 60 days from the date the ESA is signed, a motion will be filed to withdraw the consent agreement and final

order. EPA may then 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.-West Fargo Expedited Settlement Agreement

FOR RESPONDENT:




Date: 4/29/11

Name (print): Peter Mutschler

Title (print): Environment and Safety Manager

CHS, Inc.-West Fargo

FOR COMPLAINANT:



Date: 5/27/11

for
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

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

Facility Name: CHS, Inc. -West Fargo – West Fargo, North Dakota

INSPECTION DATE: 10/28/10

Subpart B: Hazard Assessment [68.20-68.42]

PENALTY

Hazard Assessment – Five-year Accident History [68.42]

Has the owner or operator included all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage? Has the owner or operator provided all of the data for each accidental release required by 40 CFR 68.42(b)? **No.**

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- **An ammonia release occurred in 2007 when a vandal opened a valve on an on-site nurse tank. One member of the public was injured. No mention is made of the accidental release in CHS's latest (2009) RMP on RMP*Info.**

Subpart C: Prevention Program [68.48 – 68.60]

Prevention Program – Hazard Review [68.50]

Did the Hazard Review identify hazards associated with the process/covered substances, opportunities for equipment malfunctions or human error, the safeguards used or needed to control the hazards or prevent equipment malfunctions or human error, steps needed to detect/monitor releases? [40 CFR 68.50(a)(1-4)] **No**

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- **The CHS, Inc.-West Fargo 2009 Hazard Review did not include identifying site specific hazards, recommending safeguards to reduce hazards, improving/refining existing safeguards, determining if accepted codes and standards are being followed, and preplanning an emergency response for applicable hazards. The HR also did not establish who will complete any recommendations made during the HR and when the recommendations will be completed.**
- **CHS, Inc. uses the same format at all of its facilities when completing hazard reviews. Each HR consists of a checklist/table which has been prepared by Asmark Institute. (The HR can be downloaded from Asmark's website.)**

<p>Seventy hypothetical hazards are provided for which CHS, Inc. is to provide recommendations regarding safeguards, etc. (These recommendations are to be provided in a space entitled “Corrective Action Required”.) Asmark has also provided 13 generic safeguards within the HR. For each hazard, CHS, Inc. is to tick off those generic safeguards which apply to the hazard. Because the safeguards are generic, CHS, Inc. must also review each generic safeguard which applies and make recommendations to improve it.</p> <ul style="list-style-type: none"> As noted above, the space, “Corrective Action Required”, is provided for this purpose. Recommendations must also be made regarding implementing any generic safeguards which have not been implemented. In addition, personnel must be assigned to complete the recommendations and a completion date must be established for the recommendations. Asmark has provided an example of how the HR is to be filled out at the top of page 2. A page has also been provided where CHS, Inc. can identify up to 22 site-specific hazards of its own choosing. However, CHS has not followed the example on page 2. CHS, Inc. has devoted its HR to addressing how to shut down and/or repair equipment after a release has occurred. It does not appear that CHS, Inc. has done due diligence to ensure the facility has an accurate and complete HR. In addition, CHS, Inc. has not provided any site-specific hazards. 	
<p>Has the owner or operator determined by inspecting all equipment that the processes are designed, fabricated, and operated in accordance with applicable standards or rules, if designed to meet industry standards or Federal or state design rules? [40 CFR 68.50(b)] No.</p> <ul style="list-style-type: none"> CHS, Inc. has not considered Article 7-12 of the North Dakota Century Code CHS, Inc. has not considered Chapter 45-12-10, Unfired Pressure Vessels, of the North Dakota Boiler Rules CHS, Inc. has not considered the instruction manual for Snappy Joe® valves CHS, Inc. has not considered the ANSI/API-510 standard CHS, Inc. has not considered the National Boiler Inspection Code 	300
<p>Prevention Program – Maintenance [68.56]</p>	
<p>Has the owner or operator performed or caused to be performed inspections and tests on process equipment that follow recognized and generally accepted engineering practices? [40 CFR 68.56(d)] No.</p> <ul style="list-style-type: none"> Suitable fitness-for-service or condition-assessment methodology has not been selected and applied per Section 4.4.3a of 2008 addendum to 2007 National Board Inspection Code. No assessment of interior condition of 30,000-gallon ammonia pressure vessel and aboveground ammonia piping has been performed. (Note: 2007 NBIC has been adopted and incorporated by reference per Section 7-12-01-01 of the North Dakota Century Code.) 	750

- An inspection plan has not been established for the 30,000-gallon ammonia pressure vessel per Section 5.1 of API 510. A corrosion specialist has not been consulted to clarify potential damage mechanisms and specific locations where they may occur per Section 5.1.1.1 of API 510. (Note: According to Chapter 45-12-10, Unfired Pressure Vessels, of the North Dakota Boiler Rules, “unfired pressure vessels [installed or ordered prior to November 1, 1987] must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines.”)
- No indication that water in immersion tank is prevented from freezing during the Fall season. (Water in tank was starting to freeze during EPA’s inspection of 10/28/10.) Freeze prevention is clearly recommended in CHS, Inc’s. “NH₃ Release” training CD. The CD states (between Minutes 16 and 17:12) that heaters, aeration systems, etc. should be employed in order to prevent the water from freezing. On the inspection date of 10/28/10, only one immersion tank was in use and filled with water. Another immersion tank was available but the tank was stored upside-down and next to an abandoned vehicle.
- During the EPA inspection of 10/28/10, ammonia was leaking from a union in the piping beneath the south end of 30,000-gallon ammonia pressure vessel. According to the North Dakota Century Code, the ammonia piping and appurtenances “must be kept leak free in operation.”
- Snappy Joe ® valves are not maintained according to the valves’ instruction manual. Maintenance portion of instruction manual states that “At least once a month, inspect and check the following things:
 1. See that the remote release is properly connected, works freely, and is not worn. Operate the release to make certain it closes the valve. If the valve closes slowly, packing replacement may be required.
 2. Make sure that the lever, latch, and release are working smoothly. The latch parts and lever are easily accessible for replacement or repair by removing the securing bolts.”
 (Note: Instruction manual also states that, “Only personnel trained in the proper procedures, codes, standards, and regulations of the LP-Gas or anhydrous ammonia industries should install and service this equipment.”)
- 30,000-gallon ammonia pressure vessel is not supported at its north saddle per section 6.4.2 of 1999 ANSI K61.1. Less than 1/3 of the circumference of the vessel’s shell is supported. A minimum of 1/3 of the circumference of the vessel’s shell must be supported at the saddle per K61.1.
- Missing isolation material between 30,000-gallon pressure vessel and north saddle on east side of saddle.
- A flat-bed truck and miscellaneous equipment have been stored on the east side of the 30,000-gallon pressure vessel. Truck and equipment could impair an emergency response at the vessel. Per section 5.3.5 of 1999 ANSI K61.1, “Container storage areas shall be accessible to emergency vehicles and personnel.”

<ul style="list-style-type: none"> • Many sections of aboveground piping, especially at the south end of the 30,000-gallon pressure vessel, have been cantilevered from their supports. Impact loads from falling objects, or from personnel standing/tripping on cantilevered sections, could put excessive bending stresses on piping, connections, and valves. Added supports could eliminate cantilevered sections. Added supports should allow for expansion and contraction of piping. Supports should comply with all applicable codes such as ANSI K61.1, NBIC, and ASME B31.5. 	
<p>Prevention Program – Incident Investigation [68.60]</p>	
<p>Was a summary prepared at the conclusion of every investigation, which included: [40 CFR 68.60(c)]</p> <ol style="list-style-type: none"> a. Date investigation began? [68.60(c)(2)] b. A description of the incident? [68.60(c)(3)] c. The factors that contributed to the incident? [68.60(c)(4)] d. Any recommendations resulting from the incident investigation? [68.60(c)(5)] No. <ul style="list-style-type: none"> • An ammonia release occurred in 2007 when a vandal opened a valve on an on-site nurse tank. One member of the public was injured. • CHS, Inc. filled out an Incident Investigation Form. The form appears to have been hastily completed and several sections of the form were not filled out. • Date investigation began was not recorded. • A description of the event was not provided. • The only contributing factor that was recorded by CHS, Inc. was “Theft”. Lack of perimeter fencing, lighting, and security were not noted. The fact that the nurse tanks were stored out of sight of vehicles/individuals passing by and in a semi-remote rural area was not noted. The fact that no locks had been applied to the nurse tank valves was not noted. The fact that the release occurred at 2:30 am (i.e. outside of normal business hours) was not noted. • CHS, Inc’s. only recommendation was “be more tentave[sic] & watch tanks watch by people (facility)”. However, this recommendation does not address incidents, such as the 2007 incident, which occurred after hours or might occur when CHS personnel are not present. 	<p style="text-align: center;">600</p>
<p style="text-align: right;">BASE PENALTY</p>	<p style="text-align: center;">\$3,000</p>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

**EXPEDITED SETTLEMENT PENALTY MATRIX
CHS, Inc.-West Fargo**

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

<i>(Amt of Chemical in process) x (Threshold Quantity)</i>		1-5*	5-10*	>10*
# of Employees	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

- 1st 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.

- 2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)
Adjusted Penalty = \$1880

- 3rd 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

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$900 = \$3000 \times .3^*$$

* # of employees is 2. 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 **EXPEDITED SETTLEMENT AGREEMENTS AND FINAL ORDERS** in the matter of **CHS, INC., CASSELTON, HORACE, MOORETON, NANSEN and WEST FARGO; DOCKET NOs.: CAA-08-2011-0011 thru CAA-08-2011-0015**. The documents were filed with the Regional Hearing Clerk on June 1, 2011.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, 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 June 1, 2011, to:

Pete Mutschler, Environmental Safety Manager
Cenex Harvest States, Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077

E-mailed to:

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

June 1, 2011



Tina Artemis
Paralegal/Regional Hearing Clerk

