



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 21 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Peter Mutschler
Environmental & Safety Manager
CHS, Inc.
5500 Cenex Drive
Inver Grove Heights, Minnesota 55077-1733

Re: CHS, Inc., Waverly, Illinois, Consent Agreement and Final Order
Docket No. CERCLA-05-2011-0018

Dear Mr. Mutschler:

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 JUL 21 2011.

Please pay the civil penalty in the amount of \$6,697 in the manner prescribed in paragraph 27, and reference your check with the billing document number 2751130B017 and the docket number CERCLA-05-2011-0018.

Your payments are due on AUG 22 2011.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert S. Guenther, Assistant Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

Bob Mayhugh, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

CERCLA-05-2011-0018

IN THE MATTER OF:

CHS, INC.,
MINNEAPOLIS, MINNESOTA,

RESPONDENT.

RECEIVED

JUL 21 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

Proceeding To Assess A Civil Penalty
Under Section 109(b) of the
Comprehensive Environmental Response,
Compensation and Liability Act,
42 U.S.C. § 9609(b)

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action commenced and concluded under section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 7609(b), 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), codified at 40 C.F.R. part 22.
2. Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is CHS, Inc., a corporation organized under the laws of the State of Minnesota.
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, an 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 and to the civil penalty assessed herein.

JURISDICTION AND WAIVER OF THE RIGHT TO A 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

12. Respondent is a “person” as that term is defined under section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. On November 15, 2010, Respondent was in charge of a nurse tank for delivery of anhydrous ammonia (facility) as a fertilizer at a farm located at 2257 Studebaker Avenue, Farmersville, Illinois.

14. Respondent’s facility consisted of equipment, storage container or rolling stock where a hazardous substance was stored or placed, or otherwise come to be located.

15. Respondent’s facility is a “facility” as that term is defined under section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Anhydrous ammonia (CAS # 7664-41-7) is a “hazardous substance” as that term is defined at section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Anhydrous ammonia has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. part 302, table 302.4.

18. On November 15, 2010, at or about 1:15 p.m., Respondent’s facility released approximately 2,487 pounds of anhydrous ammonia (the release).

19. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

20. During the release, approximately 2,487 pounds of anhydrous ammonia escaped into the ambient air.

21. The release is a “release” as that term is defined under section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on November 15, 2010 at approximately 1:15 p.m.

23. Respondent notified the NRC of the release on November 16, 2010, at 5:07 p.m.

24. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

25. Respondent's failure to immediately notify the NRC of the release is a violation of section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

CIVIL PENALTY

26. For this CERCLA violation, Complainant has determined that an appropriate civil penalty to settle this action is \$6,697. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,697 civil penalty for this CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

The check must note the following: *In the matter of CHS, Inc.*, the docket number of this CAFO, and the billing document number 27511308017

28. A transmittal letter, stating Respondent's name, the case name, 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, Illinois 60604

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

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

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

30. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 41, below, 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.

31. 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 amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

32. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by replacing six single nurse tank running gears with three double nurse tank running gears, which will increase the stability and integrity of Respondent's equipment used in transporting and delivering anhydrous ammonia, and consequently significantly reduce the likelihood of future releases.

33. Respondent must spend at least \$17,922 to purchase and install the additional nurse tank running gears.

34. Respondent must purchase and install the three double nurse tank running gears by September 15, 2011, and continuously use or operate installed nurse tank running gears for two years following their installation.

35. Respondent certifies that it is not required to perform or develop the SEP 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 not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

36. Respondent must submit a SEP completion report to EPA by October 15, 2011. This report must contain the following information:

- a. Detailed description of the SEP as completed, including photographs, digital or paper, of the new running gears and those replaced;

- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. 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).

37. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 28, above.

38. In each report Respondent submits pursuant to 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.

39. Following receipt of the SEP completion report described in paragraph 36, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 41.

40. If 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

EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 41, below.

41. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 34, Respondent must pay a penalty of \$16,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 33, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 33, Respondent must pay a penalty of \$3,000.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$500	31st day and beyond

42. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

43. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in

paragraphs 27-28, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

44. Any public statement that 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 section 103 of the Comprehensive Environmental Response, Compensation and Liability Act.”

45. 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

46. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in the CAFO.

47. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

48. Respondent certifies that it is complying with section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

49. This CAFO does not affect Respondent’s responsibility to comply with CERCLA and other applicable federal, state and local laws, and regulations.

50. This CAFO is a “final order” for purposes of EPA’s EPCRA/CERCLA Enforcement Response Policy.

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

52. 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.

53. Each party agrees to bear its own costs and attorney's fees in this action.

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

CHS, Inc., Respondent

7/6/11

Date

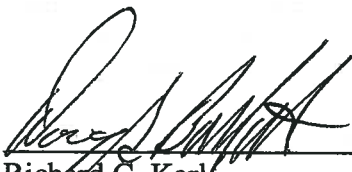


Peter Mutschler
Environmental and Safety Manager

U.S. Environmental Protection Agency, Complainant

7/14/2011

Date



Richard C. Karl
52 Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: CHS, Inc.
Docket No.: CERCLA-05-2011-0018

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

7-18-11

Date



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

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JUL 21 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF REGIONAL
COUNSEL

U.S. ENVIRONMENTAL
PROTECTION AGENCY

JUL 08 2011

OFFICE OF REGIONAL
COUNSEL

In the Matter of: CHS, Inc., Minneapolis, Minnesota
Docket No. CERCLA-05-2011-0018

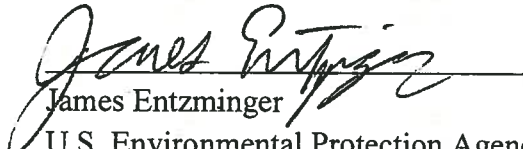
Certificate of Service

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Peter Mutschler
Environmental & Safety Manager
CHS, Inc.
5500 Cenex Drive
Inver Grove Heights, Minnesota 55077-1733

on the 21 day of July, 2011

RECEIVED
JUL 21 2011
REGIONAL HEARING CLERK
USEPA
REGION 5


James Entzminger
U.S. Environmental Protection Agency
Region 5