



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2011 JUN -1 AM 10:13

1595 WYNKOOP STREET

DENVER, CO 80202-1129

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0012

IN THE MATTER OF:

CHS, INC – HORACE

Horace, North Dakota

RESPONDENT

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FINAL ORDER

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. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
CHS, Inc.-Horace) **EXPEDITED SETTLEMENT AGREEMENT**
Horace, North Dakota)
) (COMBINED COMPLAINT AND
) (CONSENT AGREEMENT)
Respondent)
_____) **DOCKET NO.: CAA-08-2011-0012**

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.-Horace (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 29, 2010, an authorized representative of the EPA conducted a compliance inspection of the CHS, Inc.-Horace facility located at 301 Main Street in Horace, 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 \$495. 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 \$495. **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 = 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 29, 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.-Horace Expedited Settlement Agreement

FOR RESPONDENT:




Date: 4/29/11

Name (print): Peter Mutschler

Title (print): Environment and Safety Manager
CHS, Inc.-Horace

FOR COMPLAINANT:



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

Date: 5/27/11

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

Facility Name: CHS, Inc.-Horace – Horace, North Dakota

INSPECTION DATE: 10/29/2010

SUBPART C: PREVENTION PROGRAM

PENALTY

Prevention Program – Safety Information [68.48]

Has the owner or operator maintained up-to-date information on the maximum inventory of equipment in which the regulated substances are stored or processed? [40 CFR 68.48(a)(2)]: No.

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- **Maximum inventory of nurse tanks at CHS, Inc.-Horace was not available.**
- **To determine its inventory of nurse tanks during EPA’s inspection of 10/29/2010, CHS, Inc. reviewed an inspection report provided by a North Dakota’s boiler inspector. The report documented how many nurse tanks were inspected during the inspection.**

(Note: ND boiler inspectors are required to inspect CHS, Inc.-Horace only once every 5 years.)

Has the owner or operator ensured the process is designed in compliance with recognized and generally accepted good engineering practices? [68.48(b)] No.

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- **The 30,000-gallon ammonia pressure vessels and riser stands are equipped with Snappy Joe ® emergency shutoff valves. Cables have been attached to the shutoff valves to allow remote operation. Cables at riser stands pass through sharp corners in open mesh flooring or through small holes in steel tube frame. Cables at pressure vessels may not be optimally routed and connected. Cables at riser stands do not operate smoothly and do not pass over pulleys and/or through conduit at corners. Operation of shutoff valves via cables could be compromised by friction at corners.**

- **Instruction manual for Snappy Joe ® valves states that “Cable shall operate smoothly, over pulleys and/or through conduit. Do not kink cable or run cable around sharp corners. If installed in conduit, keep water out of conduit. Frozen water, dirt, or dried mud in the conduit will render the remote release inoperable.”**

(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.”)

- **Size of piping at Snappy Joe ® valves should be evaluated for correctness. Incorrectly-sized piping at a nearby CHS facility (CHS-Mooreton) contributed substantially to an ammonia release in 2007. Snappy Joe ®**

<p>valves did not close properly because of incorrectly-sized piping. Release would have been reduced substantially if piping had been sized correctly.</p> <ul style="list-style-type: none"> • CHS, Inc. does not keep PPE at a readily accessible location. PPE is kept ¼ mile away at Dakota Ag's office. Employees are supposed to keep gloves and goggles on hand but this policy is not enforced by CHS, Inc. There is no shed at the ammonia plant and CHS, Inc. is concerned about theft so PPE is not kept on site. <p>According to the North Dakota Century Code Article 7-12, Section 7-12-01-05, under "4. Requirements for safety equipment": The following personal safety equipment must be available at a readily accessible location:</p> <ol style="list-style-type: none"> (1) Two full face gas masks with spare date current ammonia canisters (2) One pair of protective gloves impervious to ammonia (3) Chemical splash goggles that are ANSI Z87.1-1989 rated (4) One pair of protective boots impervious to ammonia (5) One "slicker suit" impervious to ammonia <ul style="list-style-type: none"> • Facility identification sign may not comply with North Dakota Century Code Article 7-12. According to Section 7-12-01-05, under "1. Facility siting requirements": "A facility identification sign must be displayed stating the name, address, and telephone number of the nearest representative, agent, or owner. An emergency telephone number must also be displayed." 	
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Prevention Program – Hazard Review [68.50]

<p>Did the Hazard Review identify the safeguards used or needed to control the hazards or prevent equipment malfunctions or human error? [40 CFR 68.50(a)(3)] No.</p> <ul style="list-style-type: none"> • CHS, Inc.-Horace has not completed its 2009 Hazard Review (HR) with the review's intended purpose in mind. • The purpose of a HR includes identifying 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 those hazards which get out of control. The HR also establishes 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 Dakota Ag Coop facilities when completing HRs. Each HR consists of a checklist/table which has been prepared by Asmark Institute. (The HR can be downloaded from Asmark's website.) 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".) <p>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. As noted above, the "Corrective Action Required" section, is</p>	<p>150</p>
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<p>provided for this purpose. Recommendations must also be made regarding implementing any generic safeguards which have not been implemented.</p> <p>In addition, personnel must be assigned to complete the recommendations and a completion date must be established for the recommendations.</p> <ul style="list-style-type: none"> 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, Inc. 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 an adequate HR. In addition, CHS, Inc. has not provided any site-specific hazards. The final "Record of Findings" page is neither filled out nor signed in the 2009 HR. This page addresses deficiencies, corrective actions to be taken, and when corrective actions will be taken. 	
<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 ND 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? [68.56(d)] No.</p> <p>(Note: Inspectors from ND Department of Insurance are required to visit facility every 5 years per North Dakota Century Code.)</p> <ul style="list-style-type: none"> CHS, Inc. generally operates its ammonia system in the Fall season only. The facility is unattended during the off season. CHS may not be sufficiently diligent about maintaining the system during the off seasons. CHS, Inc.'s ammonia maintenance contractor has not been on site for approximately 10 years. 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 vessels, aboveground ammonia piping, and underground piping has been performed. 	300

(Note: 2007 NBIC has been adopted and incorporated by reference per Section 7-12-01-01 of the North Dakota Century Code.)

- An inspection plan has not been established for the 30,000-gallon ammonia pressure vessels 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 tanks is prevented from freezing during the Fall season. (Water in tanks was starting to freeze during EPA’s inspection of 10/29/10.) Freeze prevention is clearly recommended in CHS’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.
- 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 items:
 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.”)

- Various pieces of equipment, including a log-splitter, a flatbed trailer, and 2 side dressers have been stored near the 2 pressure vessels. Equipment could impair an emergency response at the vessels. According to section 5.3.5 of 1999 ANSI K61.1, “Container storage areas shall be accessible to emergency vehicles and personnel.”
- Labels on both pressure vessels are starting to peel away. Labels should be replaced.

BASE PENALTY

\$1,650

RECOMMENDATIONS

1. Ensure Compliance Audits are kept on file for 5 years. 2009 audit was available; prior audits were not available during the inspection.

2. Replace generic titles such as “location manager”, “safety manager”, and “EHS manager” with the names of the people who hold these titles in the RMP organizational chart.

Refer to Subpart A –Management [40 CFR 68.15(c)] which specifies that the owner or operator should document persons responsible for implementing individual requirements of the risk management program and defined the lines of authority through an organization chart or similar document.

Titles such as “location manager” are confusing. This is because there are many CHS facilities within 70 miles of the CHS, Inc.-Horace facility, and all assign RMP management duties to the “location manager”. An outsider (such as an EPA inspector or emergency responder) might think that the same person serves as the location manager at all of these facilities even though this is not the case. Confusion to outsiders could be eliminated by using names instead of titles.

Also, the location managers at CHS, Inc. facilities are known by several different titles (i.e. the location managers are also known as “ag operations managers”). For this reason, the location manager might think that he is the “ag operations manager”, but not the “location manager”, and duties assigned to him would not be completed. Confusion to CHS employees could be eliminated by using names instead of titles.

(Note: CHS, Inc. has provided a letter to EPA stating that the generic titles on the RMP organizational chart will be replaced with specific names. The letter was provided after EPA’s inspection of 10/29/10. CHS, Inc. should ensure that the generic titles are replaced with specific names. CHS, Inc. should also ensure that the names are kept up to date.)

3. Provide a copy of the operating procedure, “Unloading Transport Trucks by Liquid Pump”, where the transporting companies can readily access it. Ensure that the OP is kept readable and functional. Ensure that the labeling on the mailbox in which the OP is stored is kept readable.

At the time of EPA’s 10/29/10 inspection, the referenced operating procedure (OP) was not readily accessible to the transporting companies. However, CHS has since provided a letter to EPA stating that a laminated copy of the OP will be supplied within a mailbox near the 30,000-gallon ammonia pressure vessel. The letter also states that a label, such as “NH₃ Truck Unloading Procedure Inside”, will be affixed to the mailbox.

CHS, Inc. should ensure that the OP is provided and stored as described above. CHS should ensure that both the OP and the label on the mailbox are always readable and in good condition.

4. Ensure that PPE is inspected and maintained in accordance with industry standards.

At the time of EPA's 10/29/10 inspection, CHS did not take an active role in the inspection and maintenance of its PPE. Employees did not have their own respirators and fit-tests had not been performed on the respirators.

CHS should have a policy in place which ensures that the PPE are properly inspected and maintained.

(Note: CHS has provided a letter to EPA stating that CHS has developed an inspection and maintenance schedule for its PPE. The letter was provided after EPA's inspection of 10/29/10. CHS should ensure adherence to the schedule.)

5. Make sure that every maintenance contractor has ensured that each contract maintenance employee is trained to perform the maintenance procedures developed.

Refer to Subpart C – Prevention Program – Maintenance [40 CFR 68.56(c)] which specifies that every maintenance contractor ensure that each contract maintenance employee is trained to perform the maintenance procedures developed.

CHS, Inc. has a form in its database entitled “Contractor’s Safety Checklist & Acknowledgement for Risk Management Program Facilities”. When signed by the contractor, this form seems to satisfy the requirements of 40 CFR 68.56(c). However, CHS, Inc. was unable to provide documentation that CMS Petroleum Equipment (CHS’s ammonia maintenance contractor) had signed the form.

CHS, Inc. should ensure that all ammonia contractors who perform maintenance on CHS, Inc.’s ammonia system understand the procedures and sign the form.

(Note: CHS, Inc. stated that all contractors who maintain the ammonia system at Horace will be required to sign the form. CHS, Inc. made the statement by email after EPA’s inspection of 10/29/10. CHS, Inc. should ensure that the forms are signed in the future.)



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
CHS, Inc.-Horace – Horace, North Dakota

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

<i>(Amt of Chemical in process) divided by (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

$$\$495 = \$1650 \times 0.3^*$$

* # of employees is 2. The covered chemical, anhydrous ammonia, 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

