



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2011 JUN -1 AM 10:06

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2011-0013

IN THE MATTER OF:

CHS, INC – MOORETON

Mooreton, 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 1<sup>st</sup> DAY OF June, 2011.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2011 JUN -1 AM 10: 06

FILED  
EPA REGION VIII  
HEARING CLERK

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IN THE MATTER OF: )  
)  
**CHS, Inc.-Mooreton** ) **EXPEDITED SETTLEMENT AGREEMENT**  
**Mooreton, North Dakota** )  
)  
) (COMBINED COMPLAINT AND  
) (CONSENT AGREEMENT)  
)  
Respondent ) **DOCKET NO. : CAA-08-2011-0013**  
\_\_\_\_\_)

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.-Mooreton (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 27, 2010, an authorized representative of the EPA conducted a compliance inspection of the CHS, Inc.-Mooreton facility located at 405 Front Street in Mooreton, 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 \$810. 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 \$810. **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](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. 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 27, 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.-Mooreton Expedited Settlement Agreement**

FOR RESPONDENT:

  
\_\_\_\_\_

Date: 4/29/11

Name (print): Peter Motschler

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

FOR COMPLAINANT:

  
\_\_\_\_\_

Date: 5/27/11

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. - Mooreton – Mooreton, North Dakota

INSPECTION DATE: 10/27/2010

**SUBPART B: PREVENTION PROGRAM [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 accidental release of ammonia occurred on 4/15/07 when a CHS, Inc. employee pulled a nurse tank away from the facility's 30,000-gallon ammonia pressure vessel before disconnecting the nurse tank from the pressure vessel. Approximately 500 pounds of ammonia were released. The facility had to be shut down and repairs had to be completed before the ammonia facility could be brought back on line. No mention is made of the accidental release in CHS, Inc's latest (2009) RMP.

**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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- CHS, Inc.-Mooreton has not included in its 2009 HR 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.
- Each CHS 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 section entitled "Corrective Action Required".) Asmark has also provided 13 generic safeguards within the HR. For each hazard, CHS, Inc. is to check 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 section "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. 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. In addition, CHS, Inc. has not provided any site-specific hazards.

- For example, the 48<sup>th</sup> hazard addressed in CHS's 2009 HR is: "Corrosion to tank causes a small leak". For this hazard, CHS, Inc. has provided the corrective action: "Remove product left over and take tank out of service." This answer does not address safeguards. Recommendations could have included an interior inspection of the tank or a non-destructive exam of the tank. Recommendations could have also included a target date for the inspection/exam and could have specified who was to arrange the inspection/exam. Furthermore, the recommendation could have addressed how to proceed once the inspection/exam report was issued and also addressed emergency response.
- As another example, the 65<sup>th</sup> hazard addressed is "Storage tanks of flammable products stored in close proximity". For this hazard, CHS, Inc. has provided no corrective action even though a propane pressure vessel has been located next to the 30,000-gallon ammonia pressure vessel. Recommendations could have been made to consult with the Fire Marshall and the ND boiler inspector regarding the proximity of the two vessels. Recommendations could have been made to relocate the propane vessel or leave tanks in current location; however, no hazard analysis was done.
- As another example, the 26<sup>th</sup> hazard addressed is "Truck or nurse wagon drives off with hose connected causing a major release". For this hazard, CHS, Inc. has provided no corrective action even though such a release occurred in 2007. CHS, Inc. could have recommended safeguards for Hazard #26, especially since none were documented in the incident report which followed the 2007 release.

<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"> <li>• CHS, Inc. has not considered Article 7-12 of the North Dakota Century Code</li> <li>• CHS, Inc. has not considered Chapter 45-12-10, Unfired Pressure Vessels, of the North Dakota Boiler Rules</li> <li>• CHS, Inc. has not considered the instruction manual for Snappy Joe ® valves</li> <li>• CHS, Inc. has not considered the ANSI/API-510 standard</li> <li>• CHS, Inc. has not considered the National Boiler Inspection Code</li> </ul>	300
<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"> <li>• 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.)</li> <li>• 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”)</li> <li>• No indication that water in immersion tanks is prevented from freezing during the fall season. Freeze prevention is clearly recommended in CHS’s “NH<sub>3</sub> 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.</li> <li>• 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: <ol style="list-style-type: none"> <li>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.</li> <li>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.”</li> </ol> </li> </ul>	300



(Note 1: 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.”) (Note 2: Ammonia system is equipped with Snappy Joe ® emergency shutoff valves. Cables have been attached to shutoff valves to allow remote operation.)	
<b>BASE PENALTY</b>	<b>\$2,025</b>

<b>RECOMMENDATIONS</b>
<p>1. CHS, Inc. developed an inspection and maintenance schedule for their PPE after EPA’s inspection of 10/27/10. CHS, Inc. should ensure that this schedule is adhered to.</p>
<p>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.</p> <p>Refer to 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.</p> <ul style="list-style-type: none"> <li>• <b>Titles such as “location manager” are confusing. This is because there are many CHS facilities within 70 miles of the CHS, Inc.-Mooreton facility, and all assign RMP management duties to the “location manager”. An outsider (such as an EPA inspector) might think that the location manager is one and the same at all of these facilities. However this is not the case. Confusion to outsiders could be eliminated by using names instead of titles.</b></li> <li>• <b>Also, the location managers at CHS, Inc.-Mooreton and other CHS facilities are known by several different titles (i.e. the location manager at CHS-Mooreton is also known as the “ag operations manager”). 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.</b></li> </ul> <p><b>Note: CHS, Inc. replaced the generic titles on the RMP organizational chart with specific names after EPA’s inspection of 10/27/10. CHS should ensure that the names are kept up to date.</b></p>
<p>3. Consult with the Fire Marshall and the North Dakota State Boiler Inspector regarding the placement of the propane pressure vessel next to the 30,000-gallon ammonia pressure vessel.</p> <ul style="list-style-type: none"> <li>• <b>The propane vessel is currently located approximately 3 to 5 feet from ammonia vessel. However, the Fire Marshall and/or the Boiler Inspector may require more than 3 to 5 feet of separation between the 2 vessels.</b></li> </ul>

4. 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 10/27/10 inspection, the referenced OP was not readily accessible to the transporting companies. However, CHS, Inc. has since provided a laminated copy of the OP within a mailbox near the 30,000-gallon ammonia pressure vessel. A label, "NH3 Truck Unloading Procedure Inside", has been affixed to the mailbox.**
- **CHS, Inc. should ensure that both the OP and the label are kept readable and in good condition.**

5. Ensure that SCBA equipment and PPE are inspected

- **Determine and document industry standards used (i.e.: DOT 49 CFR 180.205, Compressed Gas Association, etc) and frequency of inspections, tests, and maintenance for SCBA's. Facility does not take an active role in inspecting, testing, and maintaining the SCBA's. Facility keeps no records regarding SCBA maintenance. Instead, the facility relies on the fire department (FD) to inspect, test, and maintain the SCBA's. Facility assumes that the SCBA's are compliant with all standards because the FD inspects the SCBA's. Employees do not have their own masks and fit-tests have not been performed recently on existing masks.**
- **CHS, Inc. should have a policy in place which ensures that the SCBA's are properly inspected, tested, and maintained at the appropriate intervals. CHS should not rely on the FD to make sure that the SCBA's are properly inspected, tested, and maintained.**
- **CHS, Inc. should have a similar policy in place regarding other PPE.**

6. If an incident involving ammonia occurs, ensure that an Incident Investigation is conducted and that the investigation is in compliance with 40 CFR 68.60. In particular, ensure that the investigation report includes a summary of the factors that contributed to the incident and a summary of any recommendations resulting from the investigation.

- **An ammonia incident occurred at CHS-Mooreton in 2007 and an incident investigation was conducted. However, contributing factors were not addressed and recommendations were not made. CHS, Inc. has since changed the format of their incident investigation reports. The format includes contributing factors and recommendations.**
- **CHS, Inc. should ensure that the new format, or a format that complies with 40 CFR 68.60, is used when conducting incident investigations.**



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

OFFICE OF  
 ENFORCEMENT AND  
 COMPLIANCE ASSURANCE

**EXPEDITED SETTLEMENT PENALTY MATRIX**  
**CHS, Inc.-Mooreton – Mooreton, 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>		<b>1-5*</b>	<b>5-10*</b>	<b>&gt;10*</b>
<b># of Employees Company Total</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  
  
Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)  
Adjusted Penalty = \$1880
- 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

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

$$\$810 = \$2025 \times 0.4^*$$

\* # of employees is 19. 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.

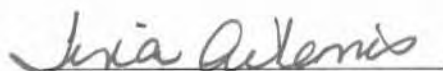
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return 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

