



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2012 DEC 19 AM 11:13

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2013-0003

IN THE MATTER OF:

CHS, INC.

d/b/a GRAINLAND COOPERATIVE

HOLYOKE AMMONIA PLANT

Holyoke, Colorado

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2), 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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 19th DAY OF December, 2012.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)

CHS, Inc. dba Grainland Cooperative)
Holyoke Ammonia Plant)
Holyoke, Colorado)

EXPEDITED SETTLEMENT AGREEMENT

Respondent)

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2013-0003

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, 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. dba Grainland Cooperative (Respondent) pursuant to sections 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) and 22.18. The EPA and the U.S. Department of Justice have determined, pursuant to section 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.

RESPONDENT

2. The Respondent owns the Holyoke Ammonia Plant and is a Minnesota corporation that does business in the State of Colorado.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § 7602(e).

ALLEGED VIOLATIONS

4. On April 18, 2012, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 22966 County Road 41 in Holyoke, Colorado, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) 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). The Checklist and Penalty Assessment is incorporated into this ESA.

CHS, Inc. dba Grainland Cooperative
EXPEDITED SETTLEMENT AGREEMENT

SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$5,400. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
 - a. 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.
 - b. The Respondent waives its rights to a hearing afforded by section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA.
 - c. Each party to this action shall bear its own cost and attorney fees, if any.
 - d. The Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days after receiving the Final Order.
 - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$5,400. **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:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

CHS, Inc. dba Grainland Cooperative
EXPEDITED SETTLEMENT AGREEMENT

Federal Express, Airborne, or other commercial carrier
(or when a physical address is required):

US Bank
U.S. EPA Fines & Penalties
Government Lockbox 979078
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

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 (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887 6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account Number: 310006
CTX Format.

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

www.PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields)

CHS, Inc. dba Grainland Cooperative
EXPEDITED SETTLEMENT AGREEMENT

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

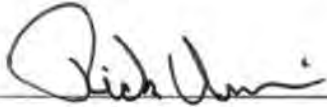
David Cobb
EPCRA/RMP Enforcement Coordinator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
 - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
 - b. claims based on criminal liability; and
 - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment or fails to correct the violations no later than sixty (60) days after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

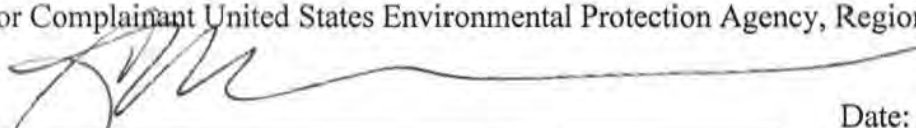
CHS, Inc. dba Grainland Cooperative
EXPEDITED SETTLEMENT AGREEMENT

- 13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
- 14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
- 15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent CHS, Inc. dba Grainland Cooperative:


_____ Date: 12/13/12
Name (print): Rick Unrein
Title (print): GENERAL MANAGER

For Complainant United States Environmental Protection Agency, Region 8:


_____ Date: 12/18/12
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

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

Respondent: CHS, Inc. dba Grainland Cooperative
Facility Name: Holyoke Ammonia Plant (HAP) in Holyoke, Colorado

INSPECTION DATE: 4/18/12

SUBPART C: PREVENTION PROGRAM [68.48 – 68.60]

PENALTY

Prevention Program – Training [68.54]

Has the owner or operator ensured that each employee presently operating a process, and each employee newly assigned to a covered process been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties. (For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.) **[68.54(a)] No.**

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- **HAP did not ensure that employees involved with ammonia operations were trained or tested competent in ammonia operating procedures. General ammonia safety training was provided to employees and documented but no training documentation was available relating to the operating procedures provided in § 68.52 that pertain to their duties. HAP employees operating a process on or before June 21, 1999, did not have certification that they were qualified to safely perform operating procedures.**

Has refresher training been provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process? Has the owner or operator, in consultation with the employees operating the process, determined the appropriate frequency of refresher training? **[68.54(b)] No.**

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- **Refresher training was not provided at least every three years to ensure employees understand and adhere to the current operating procedures of the process.**

Prevention Program – Maintenance [68.56]	
<p>Has the owner or operator prepared and implemented procedures to maintain the on-going mechanical integrity of the process equipment? (The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.) [68.56(a)] No.</p> <ul style="list-style-type: none"> • HAP has failed to prepare procedures to maintain the on-going mechanical integrity of process equipment. No procedures were available that identify the type and frequency of inspection and/or maintenance necessary to maintain the on-going integrity of process equipment. • A pressure-relief valve protecting a vapor line on the “north riser stand” had a manufacturers’ replacement date of July 1, 2008. The valve was 45+ months expired at the time of EPA’s inspection. • Load out station hoses were not replaced per manufacturer’s recommendations. Several hoses had replacement dates stamped on the hoses of 2010 and 2011. 	1200
<p>Has the owner or operator trained or caused to be trained each employee involved in maintaining the on-going mechanical integrity of the process? (To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee’s job tasks.) [68.56(b)] No.</p> <ul style="list-style-type: none"> • Employees were not trained on ammonia pump change-out procedures. 	1200
BASE PENALTY	\$5,400



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
CHS, Inc. dba Grainland Cooperative
Holyoke Ammonia Plant
Holyoke, Colorado

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

Private Industries

# of Employees	1 – 5*	>5 – 10*	> 10*
0 – 9	0.4	0.6	0.8
10 – 100	0.6	0.8	1.0
> 100	1.0	1.0	1.0

* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

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 is a private company which 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 10-100 employees and the row for >5-10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)
Adjusted Penalty = \$3760
- 3rd An Adjusted Penalty of \$3760 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 – Holyoke Ammonia Plant

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$5,400 = \$5,400 \times 1.0^*$$

* # of employees is 24. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by more than 200 times

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **CHS, INC. d/b/a GRAINLAND COOPERATIVE, HOLYOKE AMMONIA PLANT; DOCKET NO.: CAA-08-2013-0003** was filed in the Regional Hearing Clerk's Office on December 19, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Linda Kato, 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 December 19, 2012.

Rick Unrein, Facility General Manager
CHS, Inc. d/b/a Grainland Cooperative
Holyoke Ammonia Plant
P.O. Box 118, 249 West Denver Street
Holyoke, CO 80734

E-mailed to:

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

December 19, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk

