





- o Safe upper and lower limits of process equipment including accurate pressure and temperature limits of all equipment as well as accurate flow rates; and,
  - o Specifications for construction for all covered equipment including, but not limited to, vessels, piping, electrical, instrumentation, noise/vibration, fire protection, pumps and compressors.
- b) Ensure that the process tanks are designed in compliance with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.48(b);
  - c) Perform a Process Hazard Review as required by 40 C.F.R. § 68.50;
  - d) Implement a maintenance program as required by 40 C.F.R. § 68.56. The program shall include verification that all equipment is maintained in accordance with industry standards and manufacturers' recommendations and also include all covered tanks, piping, and associated valves and equipment; and,
  - e) Complete a compliance audit as required by 40 C.F.R. § 68.58.

The CERTIFICATION OF COMPLIANCE submitted by CHS shall contain the date, printed name, and signature of a CHS officer, as well as the following statement:

*I certify that I am authorized to verify the completion of work on behalf of CHS, Inc. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

6. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP's):** Respondent will perform two SEP's detailed below:
7. Description of SEP #1:  
Respondent shall make arrangement for delivery of ten Risk Management Plan (RMP) training workshops for regulated industry with operations that have a potential to be regulated under CAA 112(r)(7).
8. Prior to the beginning of the first workshop, a final agenda and the background of the instructors shall be submitted to EPA for review and approval;
9. For each State in which the workshops will be provided, CHS will notify the applicable State fertilizer association, Department of Agriculture, State Emergency Response Committee, and all Local Emergency Planning Committees. This notification will include the time and date of the workshop as well as the agenda. The training shall be open to all members of the above listed organizations as well as any agriculture ammonia supplier, at no cost;

10. At least six of the workshops shall be conducted in EPA Region 8. Of the six workshops conducted in EPA Region 8, at least three workshops shall be conducted in different locations in North Dakota;
11. All workshops shall be completed by August 31, 2011;
12. **The total expenditure for SEP #1 shall not be less than Nine Thousand One Hundred and Eighty Dollars (\$9,180).** This amount is 90% of the original SEP estimate (\$10,200).
13. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

SEP #1 Completion Report:

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the SEP #1. The SEP Completion Report shall contain the following information:
  - (i) A detailed description of the SEP as implemented;
  - (ii) A description of deviations from the original SEP proposal;
  - (iii) Locations of all completed workshops;
  - (iv) Number of attendees at each location;
  - (v) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
  - (vii) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.
14. Description of SEP #2:  
Respondent shall remove the extremely hazardous substance (anhydrous ammonia) and all associated vessels from the CHS Garretson facility;
15. The anhydrous ammonia and the anhydrous ammonia tanks will be removed from the CHS Garretson facility. If the tanks are moved to another location, the new location of the tanks will be at least one mile from a public receptor;
16. CHS will verify that local farmers and other customers will not be adversely economically impacted by removing anhydrous ammonia from this location by completing an analysis and submitting this analysis to EPA prior to commencing SEP;
17. All anhydrous ammonia and associated tanks shall be removed from the CHS Garretson facility by August 31, 2011;

18. **The total expenditure for SEP #2 shall not be less than Thirteen Thousand Five Hundred Dollars (\$13,500).** This amount is 90% of the original SEP estimate (\$15,000)

19. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

SEP #2 Completion Report:

a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of SEP #2. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any deviations from the original SEP proposal;
- (iii) Final locations of all anhydrous ammonia tanks;
- (iv) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
- (v) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.

20. Respondent agrees that failure to submit the SEP Completion Reports shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.

21. In all documents or reports, including, without limitation, the SEP Completion Reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

22. EPA acceptance of SEP Reports: Following receipt of the SEP Completion Reports described above, EPA will do one of the following:

- (i) Accept the SEP Completion Reports;
- (ii) Reject the SEP Completion Reports with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or

(iii) Reject the SEP Completion Reports and seek stipulated penalties in accordance with the provisions herein.

23. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement.

24. The determination of whether the SEPs have been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of EPA.

25. Respondent shall submit by first class mail all notices and reports required by this Consent Agreement to:

David Cobb, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

SEP STIPULATED PENALTIES, LATE FEES AND GENERAL PROVISIONS

26. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEPs described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEPs expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If the SEPs have not been completed satisfactorily, Respondent shall pay a stipulated penalty to the U.S. Treasury in the amount of Thirty Five Thousand Two Hundred Dollars (\$35,200) within thirty (30) days of written demand by EPA.
- b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay Thirty Five Thousand Six Hundred Dollars (\$35,200), less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
- c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

27. Stipulated penalties for subparagraph 26 above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
28. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the paragraph 13.
29. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
30. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs, shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act § 112(r)."
31. Respondent hereby agrees not to claim any funds expended in the performance of the SEPs as a deductible business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEPs are completed, it will submit to David Cobb, EPA Region 8, certification that any funds expended in the performance of the SEPs have not been deducted from Federal taxes.
32. Failure by Respondent to comply with any term of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
33. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
34. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Consent Agreement.
35. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
36. Each party shall bear its own costs and attorney fees in connection with this matter.
37. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Complainant

Date: 3/22/2011

By: 

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

CHS, Inc.

Respondent.

Date: 3/18/11

By: 

Peter Mutschler  
Environment and Safety Manager  
CHS, Inc.



## **COLLECTION INFORMATION**

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

### **CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

### **WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

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 "

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

**ACH (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 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. 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.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **CHS, INC., GARRETSON; DOCKET NO.: CAA-08-2010-0026** was filed with the Regional Hearing Clerk on March 24, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Senior 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 and e-mailed on March 24, 2011 to:

William Michael, Jr.  
Theresa M. Bevilacqua  
Dorsey & Whitney LLP.  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402  
[Michael.williams@dorsey.com](mailto:Michael.williams@dorsey.com)  
[Bevilacqua.theresa@dorsey.com](mailto:Bevilacqua.theresa@dorsey.com)


And certified return/receipt only to:

Peter Mutschler, Environmental and Safety Manager  
CHS, Inc.  
5500 Cenex Drive  
Inver Grove Heights, MN 55077-1721

E-mailed to:

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

March 24, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

