

CHS Inc. Auburn
 SIC # J5827
 Brian Sato, Site mgr.
 Site # 2487

STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

AGREED ORDER

CHS Inc.
 (formerly known as CENEX Supply and
 Marketing Inc.)

No. 4033

TO: Jerry Eide
 CHS Inc.
 763 Willoughby Lane
 Stevensville, MT 59870

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the Site is more particularly described in the Site Diagrams (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

- B. Parties: Refers to the State of Washington, Department of Ecology and CHS.
- C. Potentially Liable Person (PLP): Refers to CHS.
- D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by CHS:

- A. CHS is a registered, for-profit corporation headquartered in the state of Minnesota.
- B. CHS is the owner of the property located at 238 8th Street SE, Auburn, Washington 98002, (herein after the CHS Property) located in the City of Auburn, King County, Washington. CHS is the corporate successor of Cenex Supply and Marketing, Inc.
- C. A release of petroleum hydrocarbons has occurred at the Site.
- D. CHS identified petroleum hydrocarbons in soil and groundwater at the CHS Property and adjacent areas to the north-northeast in mid-1994. A leaking product line associated with the above-ground bulk fuel storage tanks was identified as one of the sources at the Site. The volume of the release was originally estimated at approximately 12,000 gallons. The total volume of product recovered to date exceeds 13,000 gallons.
- E. An Emergency Agreed Order (No. DE 94 IC-N396), effective date November 7, 1994 between CENEX Supply and Marketing, Inc. and Ecology was implemented to perform emergency remedial actions to protect human health and the environment. This Agreed Order No. 4033 supersedes and replaces Ecology's and CHS's obligations under the previous Emergency Agreed Order No. DE 94 IC-N396.
- F. CHS performed product recovery, groundwater recovery/treatment, air sparging, and soil vapor extraction in a phased remedial action.

groundwater monitoring. Ecology, in consultation with CHS will use the groundwater monitoring results and system performance report due in October 2006 to set the optimal level of operation for the air sparge system. These activities warrant an interim action consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that CHS take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

- A. Provide for the ongoing operation, maintenance, monitoring, and optimization of the existing treatment system.
- B. Perform a RI/FS that includes a Health and Safety Plan in accordance with WAC 173-340-810 and a Sampling and Analysis Plan in accordance with WAC 173-340-350.
- C. Enter electronic data into Ecology's Environmental Information Management (EIM) System.
- D. The schedule for performance and/or deliverables is attached in Exhibit B (RI/FS Work Plan) and is hereby made a fully enforceable part of this Order.
- E. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

Except where necessary to abate an emergency situation, CHS shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Brian S. Sato, P.E.
Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7265

The project coordinator for CHS is:

Jerry Eide
763 Willoughby Lane
Stevensville, MT 59870
(406) 777-0114

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and CHS, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, CHS shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by CHS pursuant to implementation of this Order. CHS shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow CHS and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII F. (Access), Ecology shall notify CHS prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with CHS.

Ecology shall maintain the responsibility for public participation at the Site. However, CHS shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, CHS has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. CHS may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of CHS' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII, M. (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII, N. (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and CHS. CHS shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII, J. (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct CHS to cease such activities for such period of time as it deems necessary to abate the danger. CHS shall immediately comply with such direction.

In the event CHS determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, CHS may cease such activities. CHS shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction CHS shall provide Ecology with documentation of the basis for the

Prior to CHS' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, CHS shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, CHS shall notify Ecology of said transfer. Upon transfer of any interest, CHS shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by CHS pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements, other than street use permits and the Water Well Construction Act, Chapter 18.104 RCW, have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), CHS is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, CHS shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

CHS has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or CHS determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or CHS shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, CHS shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event CHS refuses, without sufficient cause, to comply with any term of this Order, CHS will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

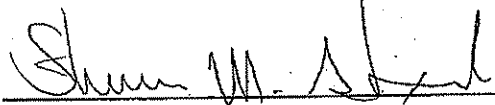
Effective date of this Order: 6.12.07

CHS Inc.



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**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



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