IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:            ADMINISTRATIVE ORDER
CHS Inc.                           NO. 2019-AQ-37

To:       CHS, Inc.
          Attn: Tim Weber
          2637 Pettibone Avenue
          Muscatine, Iowa 52161

          Corporation Service Company
          505 5th Avenue
          Suite 279
          Des Moines, Iowa 50309

Re: Failure to timely submit a 2018 Minor Source Emission Inventory
    (MSEI).

I. SUMMARY

This administrative order (Order) is issued to CHS Inc. (CHS) by the Iowa Department of Natural Resources (DNR) to address CHS’s failure to timely submit an MSEI. As outlined below, DNR provided multiple reminders regarding the need to file the MSEI, and also offered an administrative consent order to settle this matter which was rejected. As such, the Order requires CHS to submit the MSEI within 60 days of this Order being signed by the Director of the DNR, requires CHS to pay an administrative penalty of $6,000.00, and includes stipulated penalties in the event of ongoing failure to file the MSEI.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Reid Bermel, Env. Specialist
Air Quality Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: (515) 725-9535

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Division
1023 W. Madison St.
Washington, Iowa 52353
Phone: (319) 653-2135

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
II. JURISDICTION

This Order is issued pursuant to Iowa Code §§ 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that division; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following facts are relevant to this matter:

1. On January 8, 2019, DNR sent a letter to CHS stating that it was conducting an emissions inventory for the eastern portion of Iowa, and that submittal of an MSEI for 2018 was required. The due date for submittal was May 15, 2019.

2. On April 9, 2019, DNR sent a postcard reminding CHS of the May 15, 2019 deadline for the 2018 MSEI.

3. On May 15, 2019, CHS failed to submit the 2018 MSEI.

4. On May 24, 2019, DNR issued a certified letter to CHS requiring the MSEI to be submitted by June 28, 2019. On June 3, 2019, CHS received the certified letter. It was signed for by Kathy Verwers.

5. On June 28, 2019, CHS failed to submit the 2018 MSEI.

6. On July 12, 2019, DNR staff called CHS to explain the requirement to submit the 2018 MSEI. Staff left a message with an office assistant and was told Tim Weber is the Environmental Contact for CHS. The call was never returned.

7. On July 18, 2019, DNR issued a Notice of Violation (NOV) requiring that the MSEI be submitted by August 9, 2019.

8. On August 9, 2019, CHS failed to submit the 2018 MSEI.

9. On August 21, 2019, DNR staff again called CHS to explain the requirement to submit the 2018 MSEI. DNR staff again left a message with an office assistant for Tim Weber. The call was never returned.

10. On August 26, 2019, DNR staff called CHS to explain the requirement to submit the 2018 MSEI. DNR staff left a third message with an office assistant for Tim Weber. The call was never returned.
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CHS INC.

11. As of the September 24, 2019, the MSEI has not been received by DNR.

12. On September 24, 2019, DNR sent to CHS via certified mail an administrative consent order addressing the company's non-compliance and offering terms of settlement. That certified letter was signed for on September 27, 2019, by Kristen Nesbitt. No response was received by DNR.

13. On November 1, 2019, DNR sent a second notice and administrative consent order to CHS via certified mail, including a warning that failure to respond would result in a unilateral order being issued with an increased administrative penalty. That certified letter was signed for on November 4, 2019 by the same person. No response was received by DNR.

IV. CONCLUSION OF LAW

1. Iowa Code § 455B.134(2) authorizes the Director to issue air quality permits for the operation of certain facilities in the state of Iowa.

2. 567 IAC 21.1(3) states that the person responsible for the operation of certain regulated equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the director upon the director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEI for CHS was due on May 15, 2019, and the facility was informed of this requirement on several occasions. To date, CHS has failed to submit the MSEI. The above-referenced facts establish a violation of this regulatory requirement.

V. ORDER

THEREFORE, the DNR orders the following:

1. If not yet submitted, CHS must submit the 2018 MSEI within 60 days of this Order being signed by the Director.

2. CHS shall pay an administrative penalty of $6,000.00 within 60 days of this Order being signed by the Director.

3. If the requirement enumerated in paragraph V.1, above, is not complied with within 60 days of the date this Order is signed by the Director, CHS shall pay a stipulated penalty in the amount of $500.00 per month, up to $4,000.00, upon demand from the DNR. Any stipulated penalty is in addition to the administrative penalty assessed in paragraph V.2.
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: CHS INC.

4. CHS shall at all times in the future comply with all requirements of
Iowa law.

VI. PENALTY

1. Iowa Code § 455B.109 authorizes the Environmental Protection
Commission (Commission) to establish by rule a schedule of civil penalties up to
$10,000.00 that may be assessed administratively. The Commission has adopted
this schedule with procedures authorizing the Director to assess administrative
penalties at 567 IAC 10.

2. Additionally, Iowa Code § 455B.146 authorizes the assessment of
civil penalties of up to $10,000.00 per day of violation for the air quality violations
involved in this matter. More serious criminal sanctions are also available pursuant
to Iowa Code § 455B.146A.

3. 567 IAC 10 establishes the criteria that the DNR must consider in
determining whether an administrative penalty is warranted, and if so how much
the penalty should be. The general categories of consideration are the economic
benefit of the alleged non-compliance by the violator, the gravity of the alleged
violation, and the culpability of the violator. Pursuant to this rule, the DNR has
determined that the most effective and efficient means of addressing the above-
cited violations is the issuance of an Order with a $6,000.00 penalty.

4. The stipulated penalties in this Order are for future violations. The
penalties reflect the potential economic benefit to CHS for failure to make the
expenditures necessary to comply with applicable regulations. The penalties
would also address the serious nature of the ongoing violation, and CHS' ongoing
culpability for non-compliance.

5. The administrative penalty assessed by this Order is determined as
follows:

a) **Economic Benefit**: DNR assesses no penalty under this element.

b) **Gravity of the Violations**: Elements to consider when
determining the gravity of a violation include the actual or threatened harm to the
environment or the public health and safety, the amount authorized for civil
penalties for the violations, and whether the violation threatens the integrity of the
regulatory program. Failing to submit accurate reports in a timely manner prevents
the DNR, as well as the public, from promptly being informed of the facility's
compliance status with regard to Iowa's air quality rules. In addition, each week
that CHS fails to submit the MSEI further harms the DNR's ability to accurately
inventory minor source pollutants. Failure to penalize late reporting creates an
incentive for other parties to do the same. The violations referenced in this order
threaten the integrity and viability of the DNR's air quality program. As such, $3,000.00 is assessed for this factor.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. Despite repeated efforts by the DNR to remind CHS of its regulatory obligations, the company continues to ignore these obligations. Due to the repeated and ongoing nature of the violations, $3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed within 60 days of issuance of this Order. The Appeal should be sent to David Scott at the address above. A contested case hearing will then be scheduled pursuant to Iowa Code Chapter 17A and 561 IAC 7.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties, or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Sections V.1, V.2, and V.4 of this Order constitutes full satisfaction of all requirements pertaining to the violations described in the Order. However, DNR reserves the right to issue subsequent orders or to refer the matter to the Attorney General in lieu of collecting stipulated penalties.

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 27th day of December, 2019

CC: Reid Bermel, AQB; David Scott; VII.C.3