



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 01 2007

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David A. Crass  
Michael Best & Friedrich LLP  
Suite 700  
One South Pinckney Street  
Madison, WI 53703

Re: Conserv FS, Inc., Kansasville, Wisconsin - Consent Agreement and Final Order  
Docket Nos.: CERCLA-05-2007-0006; EPCRA-05-2007-0006; MM-05-2007-0002

Dear Mr. Crass:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on August 1, 2007.

Please pay the CERCLA civil penalty in the amount of \$5,239 in the manner prescribed in paragraphs 11 and 13, and reference you check with the billing document number 2750730B018 and the docket number(s) CERCLA-05-2007-0006 and MM-05-2007-0002.

Please pay the EPCRA civil penalty in the amount of \$15,717 in the manner prescribed in paragraphs 12 and 13, and reference you check with the billing document number 2750744E026 and the docket number(s) EPCRA-05-2007-0006 and MM-05-2007-0002.

Your payments are due on September 1, 2007.

Please feel free to contact Ruth McNamara at (312) 353-3197 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jeffery M. Trevino, Associate Regional Counsel, at (312) 886-6729. Thank you for your assistance in resolving this matter.

**In the Matter of:  
Conserve FS, Inc., Kansasville, Wisconsin  
Consent Agreement & Final Order**

Sincerely yours,



Mark J. Horwitz, Chief  
Chemical Emergency Preparedness  
And Prevention Section

Enclosure

cc: Regional Hearing Clerk  
U.S. EPA Region 5

Jeff Trevino (w/enclosure)  
ORC

Dawn Foss (w/enclosure)  
Indiana SERC

Judge Spencer T. Nissen  
Office of Administrative Law Judges

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>DOCKET NOS. CERCLA-05-2007-0006;</b>
	)	<b>EPCRA- 05-2007-0006;</b>
<b>Conserv FS, Inc., Kansasville, Wisconsin</b>	)	<b>MM- 05-2007-0002</b>
	)	
<b>RESPONDENT.</b>	)	

2007 AUG -1 PM 1:59  
REGIONAL SUPERFUND CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

**CONSENT AGREEMENT**

1. On January 10, 2007, Complainant, the Director, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA), filed this civil administrative action pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, and 325 of the Emergency Planning Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045, against Conserve FS, Inc., 4304 South Beaumont Avenue, Kansasville, Wisconsin (Respondent).

2. The Complaint alleged that beginning on or about 7:55 p.m. (CST) October 11, 2004, Respondent knew it released from one of its tanks approximately 1,055 pounds of Ammonia CAS No. 7664-41-7, and failed to: 1) notify immediately the National Response Center in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a); 2) notify immediately the State Emergency Response Center in violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a); 3) notify immediately the Local Emergency Planning Commission in violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a); and, 4) provide the State Emergency Response Center as soon as practicable a written follow-up emergency notice in violation of Section 304(c) of EPCRA, 42 U.S.C.

§ 11004. The Complaint proposed a civil penalty of \$20,149.00 for Respondent's violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and a civil penalty of \$68,730.00 for Respondent's violations of Sections 304 of EPCRA, 42 U.S.C. § 11004.

3. On or about February 12, 2007, Respondent filed its Answer and requested a hearing. Respondent denied the allegations of the Complaint. Complainant and Respondent agree to settle the alleged violations of the Complaint by entering into this Consent Agreement and Final Order (CAFO). By entering into this CAFO, Respondent does not admit to any of the facts or violations alleged by the Complaint.

#### **Stipulations**

4. Respondent admits the jurisdictional allegations of the Complaint as required by 40 C.F.R. § 22.18(b)(2).

5. Respondent neither admits nor denies the specific factual allegations of the Complaint pursuant to 40 C.F.R. § 22.18(b)(2).

6. Respondent consents to the assessment of the stated civil penalty below pursuant to 40 C.F.R. § 22.18(b)(2).

7. Although Respondent neither admits nor denies the allegations of the Complaint, as part of this CAFO, Respondent waives any right to contest the allegations of the Complaint and its right to appeal the proposed final order accompanying this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2).

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

9. The parties consent to the terms of this CAFO.

**Civil Penalty**

10. The parties agree to resolve this action for a total civil penalty of \$20,956.00.

11. Respondent shall pay a civil penalty of \$5,239.00 within thirty (30) days of the effective date of this CAFO for its alleged violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Respondent shall pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA, Region 5  
ATTN: Superfund Receivables  
P.O. Box 371531  
Pittsburgh, PA 15251-7531.

The check must note the case title of this matter (In the Matter of Conserv FS, Inc.) the Docket Nos. (CERCLA-05-2007-0006 and MM-05-2007-0006) and the CERCLA Billing Document No.

2750730B018

12. Respondent shall pay a civil penalty of \$15,717.00 within thirty (30) days of the effective date of this CAFO for its alleged violations of Sections 304 of EPCRA, 42 U.S.C. § 11004. Respondent shall pay the penalty by sending a cashier's or certified check, payable to the Order of "U.S. Treasurer," to:

U.S. EPA, Region 5  
Finance  
P.O. Box 371531  
Pittsburgh, PA 15251-7531.

The check must note the case title of this matter (In the Matter of Conserv FS, Inc.), the Docket Nos. (EPCRA-05-2007-0006 and MM-05-2007-0006), and the EPCRA Billing Document No.

2750744E026

13. Respondent must include with each payment a transmittal letter, stating the case title of this matter (In the Matter of Conserv FS, Inc.), Respondent's complete address, the Case Docket Nos., and the Billing Document No. Respondent must send copies of each check and transmittal letter to:

Regional Hearing Clerk  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (E-13J)  
Chicago, IL 60604-3511

Ruth McNamara  
Chemical Emergency Preparedness and Prevention Section  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (SC-6J)  
Chicago, IL 60604-3511

Jeffery M. Trevino  
Office of Regional Counsel  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (C-14J)  
Chicago, IL 60604-3511.

14. This civil penalty is not deductible for federal tax purposes.

15. If Respondent does not pay the civil penalty timely, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States's enforcement expenses for the collection action.

16. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty (30) days past due. U.S. EPA will

assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

17. This CAFO resolves Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

18. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not alleged in the Complaint.

19. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state, and local laws and regulations.

20. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103(a) of CERCLA and Section 325 of EPCRA.

21. The terms of this CAFO bind Respondent and its successors and assigns.

22. Each person signing this CAFO certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.

23. Each party agrees to bear its own costs and fees, including attorney's fees, for this action.

24. This CAFO constitutes the entire agreement between the parties.

**In the Matter of Conserve FS, Inc., Kansasville, Wisconsin.**

**Docket Nos. CERCLA-05-2007-0006;**

**EPCRA- 05-2007-0006;**

**MM- 05-2007-0002.**

**Consent Agreement and Final Order.**

RESPONDENT

Conserve FS, Inc.

4304 South Beaumont Avenue

Kansasville, Wisconsin.



Dave L. Mottet, General Manager

7/9/07

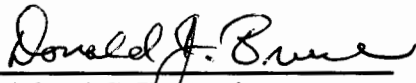
Date

COMPLAINANT

Superfund Division

Region 5

United States Environmental Protection Agency



for Richard C. Karl, Director  
Emergency Response Branch I  
Superfund Division

7/25/07


Date



**In the Matter of Conserve FS, Inc., Kansasville, Wisconsin.  
Docket Nos. CERCLA-05-2007-0006;  
EPCRA- 05-2007-0006;  
MM- 05-2007-0002.  
Consent Agreement and Final Order.**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.



Mary Gade  
Regional Administrator  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago Illinois 60604-3590

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RECEIVED  
REGIONAL HEARING CLERK

**In the Matter of Conserve FS, Inc., Kansasville, Wisconsin.**

**Docket Nos. CERCLA-05-2007-0006;**

**EPCRA- 05-2007-0006;**

**MM- 05-2007-0002.**

**Consent Agreement and Final Order.**

**CERTIFICATE OF SERVICE**

I, Ruth McNamara, certify on the 1st day of August, 2007, I hand delivered the original of the Consent Agreement and Final Order for this action to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Judge Spencer T. Nissen, Administrative Law Judge, and to Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Judge Spencer T. Nissen  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-2001

David A. Crass  
Michael Best & Friedrich LLP  
Suite 700  
One South Pinckney Street  
Madison, WI 53703

2007 AUG -1 PM 1:58  
REGIONAL HEARING CLERK

*Ruth McNamara*

Ruth McNamara  
Environmental Protection Specialist  
Chemical Emergency Preparedness and Prevention Section  
Superfund Division  
Region 5  
U.S. Environmental Protection Agency