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February 12, 2007

VIA FEDERAL EXPRESS

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Re: In re: Conserv FS, Inc., Dkt. No. CERCLA-05-2007-0006, EPCRA-05-2007-0006, MM-05-2007-0002

Dear Sir or Madam:

Enclosed please find an original and two (2) copies of Conserv FS, Inc.'s Answer and Affirmative Defenses in the above-captioned matter. Please return a file-stamped copy of the Answer and Affirmative Defenses in the enclosed self-addressed stamped envelope.

Pursuant to the instructions contained in paragraphs 67 and 75 of the complaint and as stated in the Answer and Affirmative Defenses, Conserv FS formally requests a hearing before an administrative law judge and an informal settlement conference. In regard to the latter, we will also be contacting Ruth McNamara individually as directed by paragraph 75 of the complaint.

By a copy of this letter, we are serving a copy of the above-referenced document on Jeffery Trevino as directed by paragraph 69 of the complaint. Thank you for your attention to this matter.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

A handwritten signature in black ink, appearing to read "David A. Crass", followed by the word "for" in a smaller, cursive script.

David A. Crass

cc: Jeffery Trevino, Esq. (U.S. mail)
Ruth McNamara (U.S. mail)
David Mottet (U.S. mail)
Michael A. Hughes, Esq.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)	Docket No. CERCLA-05-2007-0006
)	EPCRA-05-2007-0006
CONSERV FS, Inc.)	MM-05-2007-0002
4304 South Beaumont Avenue)	
Kansasville, Wisconsin,)	Proceeding to Assess a Civil Penalty under
)	Section 109(b) of the Comprehensive
Respondent.)	Environmental Response, Compensation,
)	and Liability Act, and 325(b)(2) and 325(c)
)	of the Emergency Planning and Community
)	Right-to-Know Act of 1986

ANSWER AND AFFIRMATIVE DEFENSES OF CONSERV FS, INC.

COMES NOW, Respondent Conserv FS, Inc. ("Conserv FS"), by its attorneys, Michael Best & Friedrich LLP, and for their Answer and Affirmative Defenses to the United States Environmental Protection Agency's Complaint in the above-entitled matter, states and alleges as follows:

1. In response to Paragraph 1 of the Complaint, Conserv FS lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore puts Plaintiff to its burden of proof.

2. In response to Paragraph 2 of the Complaint, Conserv FS lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore puts Plaintiff to its burden of proof.

3. In response to Paragraph 3 of the Complaint, Conserv FS admits.

4. In response to Paragraph 4 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

5. In response to Paragraph 5 of the Complaint, Conserv FS asserts that the

allegations contained therein are legal conclusions to which no response is necessary.

6. In response to Paragraph 6 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

7. In response to Paragraph 7 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

8. In response to Paragraph 8 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

9. In response to Paragraph 9 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

10. In response to Paragraph 10 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

11. In response to Paragraph 11 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

12. In response to Paragraph 12 of the Complaint, Conserv FS admits.

13. In response to Paragraph 13 of the Complaint, Conserv FS admits.

14. In response to Paragraph 14 of the Complaint, Conserv FS admits that it stores anhydrous ammonia in nurse tanks located on its property, but denies the remainder of the allegations.

15. In response to Paragraph 15 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

16. In response to Paragraph 16 of the Complaint, Conserv FS admits that it owns or operates nurse tanks that are located at its Kansasville property, but denies the remainder of the allegations.

17. In response to Paragraph 17 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

18. In response to Paragraph 18 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

19. In response to Paragraph 19 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

20. In response to Paragraph 20 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

21. In response to Paragraph 21 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

22. In response to Paragraph 22 of the Complaint, Conserv FS admits that it stored anhydrous ammonia in nurse tanks at its Kansasville location, but denies the remainder of the allegations.

23. In response to Paragraph 23 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

24. In response to Paragraph 24 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

25. In response to Paragraph 25 of the Complaint, Conserv FS affirmatively alleges that it estimated that 1,055 pounds of anhydrous ammonia may have been released based on the average weight of prior loads of the nurse tank and the weight of the nurse tank after the alleged release. However, Conserv FS denies that a reportable quantity was released in any 24 hour period and thus denies the allegations.

26. In response to Paragraph 26 of the Complaint, Conserv FS affirmatively alleges

that some anhydrous ammonia dissipated into the atmosphere. However, Conserv FS denies that 100 pounds or more was released in any 24 hour period and thus denies the remainder of the allegations.

27. In response to Paragraph 27 of the Complaint, Conserv FS affirmatively alleges that it estimated that 1,055 pounds of anhydrous ammonia may have been released based on the average weight of prior loads of the nurse tank and the weight of the nurse tank after the alleged release. However, Conserv FS denies that a reportable quantity was released in any 24 hour period and thus denies the allegations.

28. In response to Paragraph 28 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

29. In response to Paragraph 29 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

30. In response to Paragraph 30 of the Complaint, Conserv FS admits that Matt Newholm, a Conserv FS Petroleum Sales and Delivery driver was notified at approximately 7:55 p.m. on October 11, 2004 of a suspected release of anhydrous ammonia at the Kansasville property, but denies that it had knowledge that the release exceeded a threshold quantity and therefore denies the remainder of the allegations.

31. In response to Paragraph 31 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary. To the extent a response is required, Conserv FS denies.

32. In response to Paragraph 32 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary. To the extent a response is required, Conserv FS denies.

33. In response to Paragraph 33 of the Complaint, Conserv FS affirmatively alleges that no water or soil was affected by the alleged release and there was no evidence of any vegetative distress. Moreover, there was no physical evidence that the alleged release migrated beyond the property boundaries. Therefore, Conserv FS denies the allegations.

34. In response to Paragraph 34 of the Complaint, Conserv FS admits.

35. In response to Paragraph 35 of the Complaint, Conserv FS affirmatively alleges that no water or soil was affected by the alleged release and there was no evidence of any vegetative distress. Moreover, there was no physical evidence that the alleged release migrated beyond the property boundaries. Therefore, Conserv FS denies the allegations.

36. In response to Paragraph 36 of the Complaint, Conserv FS admits.

37. Conserv FS restates all prior responses.

38. In response to Paragraph 38 of the Complaint, Conserv FS affirmatively alleges that it notified the NRC between 12:50 p.m. and 1:00 p.m. on October 12, 2004 that anhydrous ammonia had been released. Conserv FS, however, denies that there was a reportable release. Alternatively, Conserv FS affirmatively alleges that it did not know that a possible reportable quantity release existed until 12:50 p.m. on October 12, 2004. Therefore, Conserv FS denies the remainder of the allegations.

39. In response to Paragraph 39 of the Complaint, Conserv FS affirmatively alleges that, out of an abundance of caution and without admitting that a release of a reportable quantity occurred, it notified the NCR of a potential reportable release and the possible causes of said release. Conserv FS denies the remainder of the allegations.

40. In response to Paragraph 40 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary. To the

extent a response is necessary, Conserv FS denies.

41. Conserv FS restates all prior responses.

42. In response to Paragraph 42 of the Complaint, Conserv FS admits that it notified the SERC at 1:00 p.m. on October 12, 2004 that anhydrous ammonia had been released. Conserv FS, however, denies that there was a reportable release. Alternatively, Conserv FS affirmatively alleges that it did not know that a possible reportable quantity release existed until 12:50 p.m. on October 12, 2004. Therefore, Conserv FS denies the remainder of the allegations.

43. In response to Paragraph 43 of the Complaint, Conserv FS affirmatively alleges that, out of an abundance of caution and without admitting that a release of a reportable quantity occurred, it notified the SERC of a potential reportable release and the possible causes of said release. Conserv FS denies the remainder of the allegations.

44. In response to Paragraph 44 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary. To the extent a response is necessary, Conserv FS denies.

45. Conserv FS restates all prior responses.

46. In response to Paragraph 46 of the Complaint, Conserv FS affirmatively alleges that it attempted to notify the LEPC telephonically three times between 12:50 p.m. and 12:57 p.m. on October 12, 2004, but that its attempts were unsuccessful. After these three attempts proved unsuccessful, Conserv FS notified the LEPC by email at 1:00 p.m. on October 12, 2004. Conserv FS, however, denies that there was a reportable release. Alternatively, Conserv FS affirmatively alleges that it did not know that a possible reportable quantity release existed until 12:50 p.m. on October 12, 2004. Therefore, Conserv FS denies the remainder of the allegations.

47. In response to Paragraph 47 of the Complaint, Conserv FS affirmatively alleges

that, out of an abundance of caution and without admitting that a release of a reportable quantity occurred, it notified the LEPC of a potential reportable release and the possible causes of said release. Conserve FS denies the remainder of the allegations.

48. In response to Paragraph 48 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary. To the extent a response is required, Conserv FS denies.

49. Conserv FS restates all prior responses.

50. In response to Paragraph 50 of the Complaint, Conserv FS affirmatively alleges that it sent a written letter to Scott Ferguson at the Wisconsin Department of Natural Resources on October 13, 2004 after he had requested such follow-up during his visit to the Kansasville property on October 12, 2004. Conserv FS reasonably and in good faith believed that this constituted its written follow-up reporting obligation. Therefore, Conserv FS denies the allegation.

51. In response to Paragraph 51 of the Complaint, Conserv FS denies.

52. In response to Paragraph 52 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary. To the extent a response is required, Conserv FS denies.

53. In response to Paragraph 53 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

54. In response to Paragraph 54 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

55. In response to Paragraph 55 of the Complaint, Conserv FS lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore puts

Plaintiff to its burden of proof. However, Conserv FS affirmatively alleges that no penalty is warranted or should be imposed because it complied or substantially complied with all reporting requirements and that any alleged reporting deficiency was caused by the acts or omissions of third parties outside the control of Conserv FS.

56. In response to Paragraph 56 of the Complaint, Conserv FS lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore puts Plaintiff to its burden of proof.

57. In response to Paragraph 57 of the Complaint, Conserv FS asserts that the allegations contained therein are legal conclusions to which no response is necessary.

58. In response to Paragraph 58 of the Complaint, Conserv FS lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore puts Plaintiff to its burden of proof. However, Conserv FS affirmatively alleges that no penalty is warranted or should be imposed because it complied or substantially complied with all reporting requirements and that any alleged reporting deficiency was caused by the acts or omissions of third parties outside the control of Conserv FS.

59. In response to Paragraph 59 of the Complaint, Conserv FS lacks knowledge or information sufficient to form a belief as to the truth of allegations, and therefore puts Plaintiff to its burden of proof

60-66. In response to Paragraphs 60-66 of the Complaint, Conserv FS asserts that the allegations contained legal and procedural conclusions to which no response is required.

67. In response to Paragraph 67 of the Complaint, Conserv FS requests a hearing before an administrative law judge.

68-74. In response to Paragraphs 68-74 of the Complaint, Conserv FS asserts that the

allegations contained legal and procedural conclusions to which no response is required.

75. In response to Paragraph 75 of the Complaint, Conserv FS requests an informal conference to discuss the facts alleged in the Complaint and to discuss settlement.

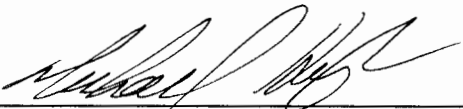
76-77. In response to Paragraphs 76-77 of the Complaint, Conserv FS asserts that the allegations contained legal and procedural conclusions to which no response is required.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted as a matter of law.
2. There was no reportable release.
3. Conserv FS complied with all reporting requirements.
4. Conserv FS substantially complied with all reporting requirements.
5. Plaintiff's damages, if any, are not the fault of Conserv FS, but may be due to the actions and/or omissions of others.

Dated this 12th day of February, 2007.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Defendant Conserv FS, Inc.

By: 

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