



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

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dave Mottet, General Manager
Conserve FS, Inc.
27310 W. Case Road
Wauconda, IL 60084

Re: In the Matter of Conserve FS, 4304 South Beaumont Avenue, Kansasville, Wisconsin
Docket No: CERCLA-05-2007-0006; EPCRA-05-2007-0006; +
Ref #: MM-05-2007-0002.

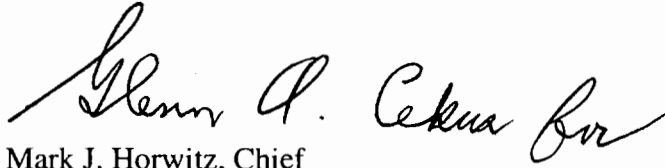
Dear Mr. Mottet:

I have enclosed a Complaint filed by the United States Environmental Protection Agency against Conserve FS, 4304 South Beaumont Avenue, Kansasville, Wisconsin, under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045]. The Complaint alleges violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304(c) of EPCRA, 42 U.S.C. § 11004(a).

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Ruth McNamara, Chemical Emergency Preparedness and Prevention Section, (SC-6J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312)353-3193. If you have any legal questions please contact Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark J. Horwitz". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

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

Enclosures(4) Complaint
Consolidated Rules
Enforcement Response Policy
Supplemental Environmental Projects Policy

cc: Jeff Trevino
ORC

William Clare
Wisconsin SERC

David Woodbury
WI - DNR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CERCLA-05-2007-0006;
EPCRA-05-2007-0006; 4
MM-05-2007-0002;
ldw

IN THE MATTER OF:

Conserve FS, Inc.
4304 South Beaumont Avenue
Kansasville, Wisconsin

Respondent.

) Docket No.
)
) Proceeding to Assess a Civil
) Penalty under Section 109(b)
) of the Comprehensive
) 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.

RECEIVED
REGIONAL OFFICE
EPA REGION 5
MAY 10 2007

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Section(s) 325(b)(2), (c)(1), (c)(2), of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), (c)(1), (c)(2).

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. The Respondent is Conserve FS, Inc, a company doing business in Wisconsin.

Statutory and Regulatory Background

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has

knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. §§ 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

6. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

7. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency planning

commission (SERC) of any state likely to be affected by a release.

8. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

9. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. § 1910, subpart Z are hazardous.

General Allegations

10. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

11. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. At all times relevant to this Complaint, Respondent was an owner or operator of the Facility located at 4304 South Beaumont Avenue, Kansasville, Wisconsin (Facility).

13. At all time relevant to this Complaint, Respondent was in charge of the Facility.

14. Respondent's Facility consists of building, structure, installation, equipment, storage container, rolling stock, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

15. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601.

16. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

17. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. Ammonia Chemical Abstracts Service (CAS) registry number 7664-41-7 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. Ammonia CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

20. Ammonia CAS # 7664-41-7 is listed under OSHA regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.

21. Ammonia CAS # 7664-41-7 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

22. At all times relevant to this Complaint, ammonia was produced, used or stored at the Facility.

23. Ammonia CAS # 7664-41-7 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

24. Ammonia CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

25. On October 11, 2004, at or about 7:55 p.m. Central Time, a release of approximately 1,055 pounds of ammonia occurred from Respondent's Facility (the release).

26. In a 24 hour time period, the release of ammonia exceeded 100 pounds.

27. During the release, approximately 1,055 pounds of ammonia spilled, leaked, poured, emitted, emptied, discharged, and/or escaped into the ambient air.

28. The release is a "release" as that term is defined under Section 101(22) of CERCLA § 42 U.S.C. § 9601(22).

29. The release is a "release" as that term is defined under Section 329(8) of EPCRA § 42 U.S.C. § 11049(8).

30. Respondent had knowledge of the release on October 11, 2004 at approximately 7:55 p.m. Central Time.

31. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

32. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

33. The release was likely to affect Wisconsin.

34. At all times relevant to this Complaint, the Wisconsin State Emergency Response Commission was the state emergency

response commission (SERC) for Wisconsin, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

35. The release was likely to affect Racine County, Wisconsin.

36. At all times relevant to this Complaint, the Racine County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Racine County, Wisconsin, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1

37. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

38. Respondent notified the NRC of the release on October 12, 2004, at 1:11 p.m. Central Time.

39. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

40. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2

41. Complainant incorporates paragraphs 1 through 40 of this Complaint as if set forth in this paragraph.

42. Respondent notified the SERC of the release on October 12, 2004, at 1:00 p.m. Central Time.

43. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

44. Each day Respondent failed to notify immediately the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as if set forth in this paragraph.

46. Respondent notified the LEPC of the release on October 12, 2004, at 12:50 p.m. Central Time.

47. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

48. Each day Respondent failed to notify immediately the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a)

Count 4

49. Complainant incorporates paragraphs 1 through 48 of this Complaint as if set forth in this paragraph.

50. As of January 14, 2005, Respondent had not provided written follow-up emergency notice of the release to the SERC.

51. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

52. Each day Respondent failed to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Proposed CERCLA Penalty

53. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

54. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires the Administrator of U.S. EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice requires, when assessing an administrative penalty under Section 109(b) of CERCLA.

55. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that the Administrator assess a civil penalty against Respondent of **\$20,149** for the CERCLA violations alleged in Count 1 of this Complaint.

56. Complainant calculated the CERCLA penalties by evaluating the facts and circumstances of this case with specific

reference to U.S. EPA's "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (dated September 30, 1999)," a copy of which is enclosed with this Complaint.

Proposed EPCRA Penalty

57. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b) and/or Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation for each EPCRA Section 304 violation that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

58. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant proposes that the Administrator assess a civil penalty against Respondent of **\$68,730** for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA

counts of this Complaint as follows:

Count 2 EPCRA Section 304(a) (SERC): \$20,149

Count 3 EPCRA Section 304(a) (LEPC): \$20,149

Count 4 EPCRA Section 304(c) (SERC): \$20,149

TOTAL EPCRA SECTION 325 PENALTY **\$60,447**

59. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. EPA's "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (dated September 30, 1999)," a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

60. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Terms of Payment

61. Respondent may pay the proposed penalty for the EPCRA violations by sending a certified or cashier's check, payable to the "Treasurer, United States of America," to:

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

62. Respondent may pay the proposed penalty for the CERCLA violations by sending a certified or cashier's check, payable to the "EPA Hazardous Substance Superfund," to:

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

63. The check must note the case title of this matter: Conserve FS Inc., the docket numbers of this Complaint and the billing document number _____.

64. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the CERCLA and EPCRA checks and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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

Jeffery Trevino
Office of Regional Counsel (C-14J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

65. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing/ABA Number 021030004 for Account Number 68010727, U.S. EPA. The wire payments must have the billing document numbers _____.

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

Notice of Opportunity to Request a Hearing

67. If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must specifically make the request in its Answer, as discussed below.

Answer

68. Respondent must file a written Answer to this Complaint if Respondent contests any material fact of the Complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified below.

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

69. Respondent must send a copy of its Answer and copies of all other documents that Respondent files in this action to :

Jeffery Trevino
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

70. If Respondent chooses to file a written Answer to the Complaint, it must do so within 30 calendar days after receiving the Complaint. In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

71. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

72. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;

- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

73. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

74. In addition, a default penalty is subject to interest, penalty and handling charges as set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. After 30 days, U.S. EPA will impose a late payment handling charge of \$15 for each 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six percent, per year penalty on any principal amount not paid within 90 days of the effective date of the default order.

Settlement Conference

75. Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the

facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact:

Ruth McNamara
Chemical Emergency Preparedness
and Prevention Section (SC-6J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-3193

76. Respondent's request for an informal settlement conference will not extend the 30 day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process.

77. U.S. EPA encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, U.S. EPA will not reduce the penalty simply because the parties hold an informal settlement conference.

Date: 11-6-06

Richard C. Karl
Richard C. Karl, Director
Superfund Division
U.S. EPA Region 5

REGIONAL OFFICE
NOV 10 11 21

In the Matter of:
Conserve FS, Inc., Kansasville, Wisconsin
CERCLA 103 and EPCRA 304 Administrative Complaint
Docket Numbers: CERCLA-05-2007-0006;
EPCRA-05-2007-0006; &
MM-05-2007-0002.

[Handwritten signature]

In the Matter of:

Conserve FS, Inc., Kansasville, Wisconsin
CERCLA 103 and EPCRA 304 Administrative Complaint

Docket Numbers: CERCLA-05-2007-0006; EPCRA-05-2007-0006; +
MM-05-2007-0002 *JBW.*

Certificate of Service

I, Ruth McNamara, certify that I filed the original and one copy of the Administrative Complaint, docket numbers

with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, and the Enforcement Response Policy, by placing them in the custody of the United States Postal Service addressed as follows:

Dave Mottet, General Manager
Conserve FS, Inc.
27310 W. Case Road
Wauconda, IL 60084

on the 10th day of January, 2008.

Ruth McNamara
Ruth McNamara
U.S. Environmental
Protection Agency
Region 5

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