



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

REPLY TO THE ATTENTION OF:  
(C-14J)

April 5, 2007

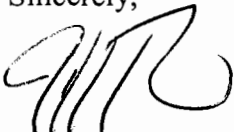
Carl C. Charneski  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Conserve FS, Inc., Kansasville, Wisconsin.  
Docket Nos. CERCA-05-2007-0006, EPCRA-05-2007-0006,  
MM-05-2007-0002.

Dear Judge Charneski:

Attached, please find a copy of COMPLAINT PREHEARING EXCHANGE for this civil administrative action which I filed today with the Regional Hearing Clerk pursuant to your PREHEARING SCHEDULING ORDER, dated March 7, 2007.

Sincerely,

  
Jeffery M. Trevino  
Associate Regional Counsel

Attachment

cc: Sonja Brooks-Woodard  
Regional Hearing Clerk  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (E-19J)  
Chicago, Illinois, 60604-3590

David A. Crass  
Michael Best & Friedrich, LLP  
Suite 700  
One South Pinckney Street  
P.O. Box 1806  
Madison, WI 53701-1806

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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

**In the Matter of** )  
 )  
**Conserve FS, Inc.,** ) **Docket Nos. CERCLA-05-2007-0006**  
 ) **EPCRA -05-2007-0006**  
**Respondent** ) **MM -05-2007-0006**

**COMPLAINANT PREHEARING EXCHANGE**

On March 7, 2007, the Court ordered Complainant to file its Prehearing Exchange for this civil administrative action by April 6, 2007. Therefore, Complainant hereby files its Prehearing Exchange.

**I. WITNESS TO BE CALLED AT HEARING**

A. Ruth McNamara  
Environmental Protection Specialist  
Office of Chemical Emergency Preparedness and Prevention  
Superfund Division  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (SC-6J)  
Chicago, IL 60604-3590  
(312) 353-3193

Ms. McNamara will testify to her educational background, employment experience, Respondent, and the following allegations of the Complaint.

1. On October 12, 2004, Respondent was a corporation doing business in the State of Wisconsin.
2. On October 12, 2004, Respondent owned and operated a facility located at 4304 South Beaumont Avenue, Kansasville, Wisconsin, ("the facility").
3. The facility consisted of buildings, equipment, and structures which were located on a single site.
4. Respondent was an employer at the facility.

5. Respondent produced, used, or stored ammonia CAS No. 7664-41-7 at its facility.
6. Between 5:00 p.m. and 7:55 p.m., on October 11, 2004, Respondent released from one of its storage tanks 1,055 pounds of anhydrous ammonia.
7. At 7:55 p.m., on October 11, 2004, Respondent knew of the release from one of its storage tanks of 1,055 pounds of anhydrous ammonia.
8. The release was likely to affect Wisconsin.
9. The Wisconsin State Emergency Response Commission was the state emergency response commission (SERC) for Wisconsin.
10. The release was likely to affect the County of Racine.
11. The Racine County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for the County of Racine.
12. At 12:00 p.m., on October 12, 2004, Respondent notified the Local Emergency Planning Committee of its release.
13. At 1:00 p.m., on October 12, 2004, Respondent notified the SERC of its release.
14. At 1:11 p.m., on October 12, 2004, Respondent notified the National Response Center (NRC) of its release.
15. As of January 14, 2005, Respondent had failed to provide to the SERC a written follow-up emergency notice of its release.
16. Respondent's release and its potential and actual harm to human health and the environment.
17. The proposed civil penalty of \$80,596.00 is appropriate pursuant to sections 109(b) of CERCLA, 42 U.S.C. § 9609(b), section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and Complainant'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."

Complainant respectfully reserves the right to amend its Witness to be Called upon timely notice to the Court and Respondent.

## II. DOCUMENTS AND EXHIBITS

- A. U.S. EPA Request for Information to Conserve FS, Inc., Kansasville, WI, dated December 29, 2004. Bates Stamp Nos. 1-12. (Complainant Exhibit No. 1).
- B. Conserve FS, Inc., Response to U.S. EPA, dated January 14, 2005. Bates Stamp Nos. 13-114. (Complainant Exhibit No. 2).
- C. U.S. EPA Letter to FOIA Officer, G-OPF, U.S. Coast Guard, Washington, D.C., dated February 9, 2005. Bates Stamp Nos. 115-116. (Complainant Exhibit No. 3).
- D. S.L. Edwards, National Response Center, Washington, D.C., Letter to Ruth McNamara, U.S. EPA, dated March 10, 2005. Bates Stamp Nos. 117-124. (Complainant Exhibit No. 4).
- E. U.S. EPA Letter to Dawn Foss, Wisconsin Emergency Management, Madison, WI, dated February 9, 2005. Bates Stamp Nos. 125-126. (Complainant Exhibit No. 5).
- F. U.S. EPA Letter to Robin Schmidt, Department of Natural Resources, Madison, WI, dated February 9, 2005. Bates Stamp Nos. 127-128. (Complainant Exhibit No. 6).
- G. U.S. EPA Letter to David L. Maack, Racine County LEPC, Racine, WI, dated February 9, 2005. Bates Stamp Nos. 129-130. (Complainant Exhibit No. 7).
- H. U.S. EPA Letter to Chief Jeff Erhardt, Kansasville Fire Department, Kansasville, WI, dated February 9, 2005. Bates Stamp Nos. 131-132. (Complainant Exhibit No. 8).
- I. 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 and Compensation Liability Act, dated September 30, 1999, Bates Stamp Nos. 133-198. (Complainant Exhibit No. 9).
- J. U.S. EPA Civil Penalty Calculation Worksheets and Narratives for Civil Administrative Action Against Conserve FS, Inc., Kansasville, WI, undated. Bates Stamp Nos. 199-213. (Complainant Exhibit No. 10).
- K. U.S. EPA Pre-Filing Notice Letter to Dave Mottet, General Manager, Conserve FS, Inc., dated September 15, 2006. Bates Stamp Nos. 215-216. (Complainant Exhibit No. 11).
- L. Dave Mottet, General Manager, Conserve FS, Inc., Letter to Ruth McNamara, U.S. EPA, dated September 27, 2006. Bates Stamp Nos. 217-236. (Complainant Exhibit No. 12).

Complainant respectfully reserves the right to amend its list of Documents and Exhibits upon timely notice to the Court and Respondent.

### III. ESTIMATE OF TIME FOR CASE-IN-CHIEF

Complainant requires approximately 2-4 hours to present to the Court its case-in-chief.

### IV. DESIRED OR REQUIRED HEARING LOCATION

Complainant prefers the hearing be held in Chicago, Illinois, as provided by sections 22.21(d) and 22.19(d) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("the Consolidated Rules"), 40 C.F.R. §§ 22.21(d) and 22.19(d).

However, Complainant does not object to conducting the hearing at a suitable location in the county where the Respondent resides (Racine County) or conducts the business which the hearing concerns (Racine County).

Respectfully submitted,



Jeffery M. Trevino  
Associate Regional Counsel  
Office of Regional Counsel  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604-3590  
Tel. No. (312) 886-6729  
Fac. No. (312) 886-0747  
[trevino.jeffery@epa.gov](mailto:trevino.jeffery@epa.gov)

REGIONAL HEARING CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

APR 5 9:23 AM

BEFORE THE ADMINISTRATOR


<b>In the Matter of</b>	)	
	)	
<b>Conserve FS, Inc.,</b>	)	<b>Docket Nos. CERCLA-05-2007-0006</b>
	)	<b>EPCRA -05-2007-0006</b>
<b>Respondent</b>	)	<b>MM -05-2007-0006</b>

CERTIFICATE OF SERVICE

I hereby certify that today I filed personally with Sonja Brooks-Woodard, Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (R-19J), Chicago, Illinois, 60604-3590, the original document entitled COMPLAINANT PREHEARING EXCHANGE for this civil administrative action and that I issued to the Court and Respondent by first class mail a copy of the original document:

Judge Carl C. Charneski  
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  
P.O. Box 1806  
Madison, WI 53701-1806

  
\_\_\_\_\_  
Jeffery M. Trevino  
Associate Regional Counsel

  
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Dated