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April 5, 2007

**VIA FEDEX**

Sonja Brooks-Woodward  
Regional Hearing Clerk  
U.S. EPA/Region V  
77 West Broadway Blvd., E-13J  
Chicago, IL 60604-3590

Re: In the matter of Conserve FS, Inc.

Dear Ms. Brooks-Woodward:

Enclosed please find an original and two copies of Conserv FS, Inc.'s Prehearing Exchange, Affidavit of Service, and Privilege Log in the above-captioned matter. Please file the originals and one copy and return the extra copies, file-stamped, to us in the enclosed, self-addressed, postage-paid envelope. Thank you.

Sincerely,

**MICHAEL BEST & FRIEDRICH LLP**

Michael A. Hughes

MAH:Imm  
Enclosures  
cc: USEPA, Office of Administrative Law Judges  
Jeffery M. Trevino, Esq.  
Dave A. Crass, Esq.  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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IN THE MATTER OF:	)	Docket Nos. 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 Sections 325(b)(2)
	)	and 325(c) of the Emergency Planning and
	)	Community Right-to-Know Act of 1986

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**CONSERV FS, INC.'S PREHEARING EXCHANGE**

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Pursuant to the Presiding Officer's Prehearing Scheduling Order, Respondent Conserv FS, Inc. ("Conserv FS"), by its attorneys, Michael Best & Friedrich LLP, states and alleges as follows:

**1.a. FACT WITNESSES**

Conserv FS intends to call the following witnesses:

1. David Mottet, David Myroth, Matt Newholm and Peter Hansen – Conserv FS

Messrs. Mottet, Myroth, Newholm and Hansen will testify regarding some or all of the following: the events of October 11-12, 2004; the procedures Conserv FS has implemented regarding the notification of Conserv FS in the event of a release; Conserv FS' response to the alleged release; and Conserv FS' investigation of the alleged amount of the release.

2. Scott Squire – Kansasville Fire Department

Mr. Squire will testify regarding the events of October 11-12, 2004 and the Fire Department's response to these events.

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3. Scott Ferguson – Wisconsin Department of Natural Resources (adversely)

Mr. Ferguson will testify regarding his visit to the Conserv FS facility on or about October 12, 2004, and his request for and receipt of written follow-up concerning Conserv FS' investigation of the alleged release.

4. Conserv FS reserves the right to call any witness disclosed by the Government.

Pursuant to an agreement between the parties and 40 C.F.R. § 22.19, Conserv FS further reserves the right to supplement its response at a later date.

#### **1.b. EXPERT WITNESSES**

Conserv FS intends to call the following expert witnesses:

1. Bob Ward, Senior Project Engineer – PGI International

Mr. Ward will testify regarding the Squibb Taylor vapor valve model AL1590, PGI's testing of this valve, and the results of that testing.

2. Dennis E. Graham, Professional Engineer – New Tech Engineering and Environmental, LLC

Mr. Graham will testify concerning construction details and industry practices regarding anhydrous ammonia nurse tanks of the type at issue here, and calculations and estimates concerning release rates from loose fill valves.

3. Jean Payne, Executive Director, Illinois Fertilization and Chemical Association.

Ms. Payne will testify concerning industry practices regarding anhydrous ammonia nurse tanks of the type at issue here.

4. Conserv FS reserves the right to call any expert witness disclosed by the Government.

Pursuant to an agreement between the parties and 40 C.F.R. § 22.19, Conserv FS reserves the right to supplement its response at a later date.

**1.c. EXHIBITS**

Conserv FS intends to proffer the following exhibits:

1. Photographs displaying signage at the Conserv FS facility in Kansasville, Wisconsin (RX-1).
2. October 13, 2004 letter from Conserv FS to Scott Ferguson of the Wisconsin Department of Natural Resources (RX-2).
3. October 12, 2004 emails from Conserv FS to the Racine County Local Emergency Planning Committee (RX-3).
4. Handwritten notes of Dave Myroth regarding telephone calls from Conserv FS to the National Response Center and the Wisconsin State Emergency Response Commission (RX-4).
5. March 26, 2007 email from Dennis Graham to Dave Mottet regarding testing of vapor valve (RX-5).
6. March 28, 2007 email from Bob Ward to Dave Mottet regarding testing of vapor valve (RX-6).
7. October 12, 2004 email from Pete Hansen to Dave Myroth regarding events of October 11, 2004 (RX-7).
8. January 12, 2005 memo from Lee Stadtlander to Dave Myroth regarding events of October 11, 2004 (RX-8).
9. Notes from Matt Newholm regarding events of October 11, 2004 (RX-9).

10. October 11, 2004 Kansasville Fire Department's report regarding the events of October 11, 2004 (RX-10).

11. September 27, 2006 letter from Dave Mottet to Ruth McNamara regarding Pre-Filing Notice Letter (RX-11).

12. Material Safety Data Sheet for Anhydrous Ammonia (RX-12).

13. Document entitled "Appendix D – Thermodynamic Properties of Ammonia" (RX-13).

14. Conserv FS' risk management contingency plan (RX-14).

15. Affidavit of David L. Mottet (RX-15).

16. Conserv FS reserves the right to use any exhibit disclosed by the Government.

Pursuant to an agreement between the parties and 40 C.F.R. § 22.19, Conserv FS further reserves the right to supplement its response at a later date.

**1.d. ESTIMATE OF TIME NEEDED**

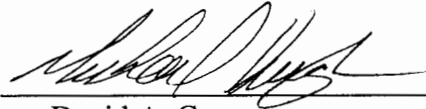
Conserv FS estimates that it will need one full day to present its case-in-chief.

**1.e. LOCATION OF THE PREHEARING HEARING**

As all the events took place at Conserv FS' Kansasville, Wisconsin facility and the majority of the witnesses are located in that area, the hearing should be held at a mutually agreeable location in Racine County, Wisconsin, pursuant to 40 C.F.R. § 22.19(d).

Dated this 5th day of April, 2007.

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

By:   
David A. Crass  
State Bar No. 1000731  
Michael A. Hughes  
State Bar No. 1047206

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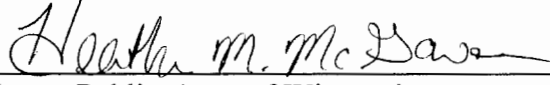
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HEATHER M. MCGOWEN  
NOTARY PUBLIC  
STATE OF WISCONSIN

  
Lynn M. Mansfield

Subscribed and sworn to before me  
this 5th day of April, 2007.

  
Notary Public, State of Wisconsin  
My commission expires: 3/15/09

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket Nos. CERCLA-05-2007-0006
	)	EPCRA-05-2007-0006
CONSERV FS, INC. 4304 South Beaumont Avenue Kansasville, Wisconsin,	)	MM-05-2007-0002
Respondent.	)	Proceeding to Assess a Civil Penalty under
	)	Section 109(b) of the Comprehensive
	)	Environmental Response, Compensation,
	)	and Liability Act, and Sections 325(b)(2)
	)	and 325(c) of the Emergency Planning and
	)	Community Right-to-Know Act of 1986

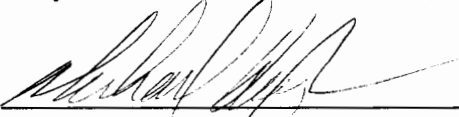
**CONSERV FS, INC.'S PRIVILEGE LOG**

Respondent Conserv FS, Inc. ("Conserv FS"), by its attorneys, Michael Best & Friedrich LLP, respectfully submits the following Privilege Log in regard to portions of certain exhibits that were submitted as part of Conserv FS's Pre-Hearing Exchange. The portions of the exhibits that were redacted are protected by the attorney-client privilege. Conserv FS reserves the right to amend and supplement this log.

EXHIBIT #	DATE	AUTHOR	RECIPIENTS	DESCRIPTION
RX-5	03/26/07	Dave Mottet, Conserv FS	Dave Crass, Michael Best & Friedrich LLP ("MBF")	Email regarding ammonia tank
RX-6	03/30/07	Dave Mottet, Conserv FS	Dave Crass, Michael Best & Friedrich LLP ("MBF")	Email regarding ammonia tank

Dated this 5th day of April, 2007.

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

By: 

David A. Crass

State Bar No. 1000731

Michael A. Hughes

State Bar No. 1047206

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