



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 01 2010

REPLY TO THE ATTENTION OF:

SC-5J

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

Mr. Robert Eichelberger  
Operations Manager  
Evergreen FS, Inc.  
Post Office Box 1367  
402 North Hershey Road  
Bloomington, Illinois 61702

Re: Evergreen FS, Inc., Shirley, Illinois, Consent Agreement and Final Order  
Docket Nos. CERCLA-05-2011-0002

Dear Mr. Eichelberger:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on DEC 01 2010

Please pay the civil penalty in the amount of \$3,895.00 in the manner prescribed in paragraph 27, and reference your check with the billing document number 2751130B002 and the docket number CERCLA-05-2011-0002.

Your payments are due on DEC 31 2010 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Thomas Krueger, Associate Regional Counsel, at (312) 886-0562. Thank you for your assistance in resolving this matter.

Sincerely,

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



6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. 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.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to 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, to \$32,500 per day of violation for

violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

**Factual Allegations and Alleged Violations**

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

13. At all times relevant to this CAFO, Respondent was in charge of the facility located at Foster & Quinn Street, Shirley, Illinois 61772 (facility).

14. Respondent’s facility consists of a building, structure, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, 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(9).

16. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On January 7, 2008, at or about 8:27 p.m., a release occurred from Respondent’s facility of approximately 500 pounds of anhydrous ammonia (the release).

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

20. During the release, approximately 500 pounds of anhydrous ammonia spilled, leaked, poured, emitted, discharged, or escaped into the land surface or subsurface strata, or ambient air.

21. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on January 7, 2008 at approximately 8:26 p.m.

23. Respondent notified the NRC of the release on January 7, 2008, at 11:21 p.m.

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

25. Respondent’s failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Civil Penalty**

26. In consideration of Respondent’s agreement to perform two supplemental environmental projects (SEPs), cooperation and return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$3,895.00.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,895.00 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier’s or certified check, payable to “EPA Hazardous Substance Superfund,” to:  
for checks sent by regular U.S. postal service

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

for checks sent by express mail

U.S. Bank  
Government Lockbox 979076 U.S. EPA Superfund Payments  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Evergreen FS, Inc., the docket number of this CAFO and the billing document number 2751130B002.

for electronic funds transfer

Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read "D68010727  
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following:

Evergreen FS, Inc., the docket number of this CAFO and the billing document number

\_\_\_\_\_.

for online payments using debit or credit card

Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit [www.pay.gov](http://www.pay.gov). Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

28. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the

payment. Respondent must provide notice of payment along with a copy of the check and transmittal letter or proof of other method of payment to:

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

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

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

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

30. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 43, below, 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' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

### **Supplemental Environmental Project**

32. Respondent must complete two SEPs designed to protect the environment or public health.

33. Respondent must complete the SEPs as follows:

- a. Within 30 days of the effective date of the CAFO, Respondent with funds from the Shirley, Illinois facility, purchase a Draeger Multi Gas Meter and donate the meter to the Dale Township Fire Department.
- b. Within 30 days of the effective date of the CAFO, Respondent will replace two single tank running gears that are based at 297 North 300 E Road, McLean, Illinois location with a dual tank running gear.

34. Respondent must spend at least \$5,000 to purchase and to donate the Draeger Multi Gas Meter and \$5,000 for the replacement of the nurse tank running gear.

35. Respondent certifies that it is not required to perform or develop either SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for either SEP in any other enforcement action.

36. U.S. EPA may inspect the McLean, Illinois facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

37. Respondent must maintain copies of the data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any data to U.S. EPA within seven days of U.S. EPA's request for the information.

38. Within 60 days of the effective date of the CAFO, Respondent must submit a SEP completion report to U.S. EPA. This report must contain the following information:

- a. Detailed description of the SEPs as completed;
- b. Description of any operating problems and the actions taken to correct the

- problems;
- c. Itemized costs of goods and services used to complete the SEPs documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEPs in compliance with this CAFO;
- e. A signed statement from the Dale Township Fire Department Fire Chief identifying the equipment received and the date of the receipt; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

39. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 28, above.

40. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, and it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP completion report described in paragraph 38, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEPs and the SEP report;
- b. There are deficiencies in either SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed either SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 43.

42. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEPs as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 43, below.

43. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 34, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEPs and the amount set forth in paragraph 34.
- b. If Respondent has completed either SEP, but either SEP is not satisfactory, Respondent must pay \$2,000.00 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEPs, Respondent must pay a stipulated penalty of \$5,000.00 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEPs or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 33 for implementing the SEPs, or fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$1,500	15th through 30th day
\$1,000	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

44. U.S. EPA's determination of whether Respondent satisfactorily completed the SEPs will bind Respondent.

45. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 27, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violation of Section 103 of CERCLA."

47. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

48. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

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

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

51. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

53. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

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

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

56. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

**In the Matter of:**  
**Evergreen FS, Inc., Shirley, Illinois**  
**Docket No.** \_\_\_\_\_

**Evergreen FS, Inc., Respondent**

11/15/2010  
Date

Robert Eichelberger  
Robert Eichelberger  
Operations Manager  
Evergreen FS, Inc.

**U.S. Environmental Protection Agency, Complainant**

11/26/10  
Date

Richard C. Karl  
Richard C. Karl  
Director  
Superfund Division

**In the Matter of:**  
**Evergreen FS, Inc., Shirley, Illinois**  
**Docket No. CERCLA-05-2011-0002**

**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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-1-10  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**RECEIVED**  
DEC 01 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**In the Matter of:**  
**Evergreen FS, Inc., Shirley, Illinois**  
**Docket No. CERCLA-05-2011-0002**

**Certificate of Service**

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Evergreen FS, Inc. by placing it in the custody of the United States Postal Service addressed as follows:

Robert Eichelberger  
Operations Manager  
Evergreen FS, Inc.  
P.O. Box 1367  
402 North Hershey Road  
Bloomington, IL 61702

**RECEIVED**  
DEC 01 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

on the 1 day of December 2010

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5