



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
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REPLY TO THE ATTENTION OF:  
C-14J

October 14, 2011

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D.C. 20460

RE: In the Matter of Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist; Docket No. RCRA-05-2011-0009

Dear Chief Judge Biro:

Please find enclosed a copy of Complainant's Initial Prehearing Exchange, filed on October 14, 2011, in the above-captioned matter. Please note that due to Confidential Business Information issues, Complainant is filing a full copy under seal and a redacted copy. Also please note that after consultation with Staff Attorney Steven Sarno in your office and after receiving permission from opposing counsel, the exhibits being filed with Complainant's Initial Prehearing Exchange are in CD-ROM format, with the exception of several oversized documents (part of CX24).

Sincerely yours,

Catherine Garypie  
Associate Regional Counsel

Enclosures

cc: Keven D. Eiber (w/ enclosures)  
Lawrence M. Falbe (w/ enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Carbon Injection Systems, LLC,  
Scott Forster,  
Eric Lofquist,

Respondents.

) Docket No. RCRA-05-2011-0009  
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COMPLAINANT'S INITIAL PREHEARING EXCHANGE

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REGIONAL HEARING CLERK  
U.S. EPA REGION 5

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Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, through her undersigned attorney, respectfully submits this Prehearing Exchange in accordance with the Presiding Officer's Order dated August 5, 2011, Order on Joint Motion for Stay of Proceeding dated August 15, 2011, and 40 C.F.R. § 22.19(a).

**I. A list of fact witnesses intended to be called at hearing, along with a narrative summary of their expected testimony.**

Complainant may call any or all of the following individuals as witnesses in the hearing in this matter.

**A. Michael Beedle**

Mr. Michael Beedle is an Environmental Scientist with the Resource Compliance Section #2 of the RCRA Branch in the Land and Chemicals Division, U.S. EPA, Region 5. Mr. Beedle has detailed and extensive experience with the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k (hereafter referred to as RCRA), and regulations promulgated thereunder. Mr. Beedle is expected to testify about the events and evidence related to his August 27, 2008, inspection of the Carbon Injection System LLC (CIS) facility located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio, his August 26-27, 2010, inspection of WCI Steel, Inc. (a/k/a Severstal Warren and RG Steel), 1040 Pine Avenue SE, Warren, Ohio, and his review of various documents related to the facilities. Mr. Beedle is also expected to present testimony regarding the calculation of the proposed penalty in this case, the consistency of the penalty with the applicable EPA policy, and the appropriateness of the penalty in this case. If necessary, Mr. Beedle may also provide testimony sufficient to authenticate documents submitted for evidence at hearing.

**B. Scott Forster**

Mr. Forster has been the President and co-owner of CIS from 2004 until the present. Mr. Forster is expected to testify regarding the business operations of CIS, including the procurement of hazardous waste, the blending of the hazardous waste with used oil, the fuel specifications given by WCI Steel, Inc., to CIS, and the injection of the fuel into the WCI Steel Inc., blast furnace. Mr. Forster will also testify as to the research conducted by CIS and its officers, prior to the dates of most of the violations alleged, into the question of whether a material fed into a blast furnace is considered a hazardous waste and is therefore regulated by RCRA. Mr. Forster will also testify as to penalty-related matters, including: Potential for Harm under the June 2003 RCRA Civil Penalty Policy, as amended (including the large amount of hazardous waste treated and stored by CIS, and; the use of the hazardous wastes in a steel mill blast furnace for energy recovery), appropriate Gravity/Multi-Day matrix placement under the June 2003 RCRA Civil Penalty Policy, as amended (including the extensive experience which Mr. Forster and Eric Lofquist have in RCRA-regulated industries); Adjustment Factors under the June 2003 RCRA Civil Penalty Policy, as amended (including the October 23, 2008 criminal charges related to RCRA and the Clean Water Act brought by EPA against Mr. Forster and a company formerly operated by Mr. Forster and Mr. Lofquist; the subsequent plea agreements and judgments, and; Mr. Forster's ability to pay a penalty). Mr. Forster will also testify as to the active involvement of Mr. Forster and Mr. Lofquist in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.

**C. Eric Lofquist**

Mr. Lofquist has been the Vice President and co-owner of CIS from 2004 until the present. Mr. Lofquist is expected to testify regarding the business operations of CIS, including the procurement of hazardous waste, the blending of the hazardous waste with used oil, the fuel specifications given by WCI Steel, Inc., to CIS, and the injection of the fuel into the WCI Steel Inc., blast furnace. Mr. Lofquist will also testify as to the research conducted by CIS and its officers, prior to the dates of most of the violations alleged, into the question of whether a material fed into a blast furnace is considered a hazardous waste and is therefore regulated by RCRA. Mr. Lofquist will also testify as to penalty-related matters, including: Potential for Harm under the June 2003 RCRA Civil Penalty Policy, as amended (including the large amount of hazardous waste treated and stored by CIS, and; the use of the hazardous wastes in a steel mill blast furnace for energy recovery), appropriate Gravity/Multi-Day matrix placement under the June 2003 RCRA Civil Penalty Policy, as amended (including the extensive experience which Mr. Lofquist and Scott Forster have in RCRA-regulated industries); Adjustment Factors under the June 2003 RCRA Civil Penalty Policy, as amended (including the October 23, 2008 criminal charges related to RCRA and the Clean Water Act brought by EPA against Mr. Forster and a company formerly operated by Mr. Forster and Mr. Lofquist, the subsequent plea agreements and judgments, and; Mr. Lofquist's ability to pay a penalty). Mr. Lofquist will also testify as to the active involvement of Mr. Lofquist and Mr. Forster in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.

**D. Robert Gephart**

Mr. Robert Gephart was the Vice President of Sales at Geptek, Inc. (d/b/a GTI) during the relevant time period. GTI, which is headquartered in Morristown, New Jersey and has sales

offices in Dyer, Indiana, and Changsha, China, brokers oil and chemicals. Mr. Robert Gephart is expected to testify regarding brokering hazardous waste from JLM Chemicals, Inc. (JLM), to CIS. Mr. Robert Gephart is also expected to testify regarding the active involvement of Eric Lofquist and Scott Forster in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.

**E. Stephen Gephart**

Mr. Stephen Gephart was the Vice President of Sales at Geptek, Inc. (d/b/a GTI) during the relevant time period. GTI, which is headquartered in Morristown, New Jersey and has sales offices in Dyer, Indiana, and Changsha, China, brokers oil and chemicals. Mr. Stephen Gephart is expected to testify regarding brokering hazardous waste from JLM to CIS. Mr. Stephen Gephart is also expected to testify regarding the active involvement of Eric Lofquist and Scott Forster in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.

**F. Donald DuRivage**

Mr. DuRivage was the Environmental Health and Safety Manager during the relevant time period at the International Flavors and Fragrances, Inc. (IFF) Augusta, Georgia facility. IFF is a major manufacturer of flavor and fragrance products used by other manufacturers to impart or improve flavor or fragrance in a wide variety of consumer products. IFF has thirty (30) manufacturing facilities, with the major manufacturing facilities located in the United States, Europe, South America, and Asia. The IFF facility in Augusta, Georgia manufactures fragrance ingredients. Mr. DuRivage is expected to testify regarding the flashpoint of one of the hazardous waste streams shipped from IFF and treated and stored at the CIS facility. Mr. DuRivage is also

expected to testify regarding the active involvement of Eric Lofquist in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.

**G. Theresa Barry**

Ms. Barry was the Manager of Environmental Affairs North America during the relevant time period at the International Flavors and Fragrances, Inc. (IFF) Shrewsbeury, New Jersey facility. IFF is a major manufacturer of flavor and fragrance products used by other manufacturers to impart or improve flavor or fragrance in a wide variety of consumer products. IFF has thirty (30) manufacturing facilities, with the major manufacturing facilities located in the United States, Europe, South America, and Asia. Ms. Barry is expected to testify regarding her characterization of one of the hazardous waste streams shipped from IFF and treated and stored at the CIS facility as an ignitable by-product. Ms. Barry is also expected to testify regarding her recommendation that the material not be burned for energy recovery or used to produce a fuel.

**H. Ernie Willis**

Mr. Willis was the Operations Manager during the relevant time period at Innovative Waste Management, Inc. (IWM) (a/k/a Innovative Resource Management) in Summerville, South Carolina. IWM buys and sells chemicals, offering generators alternative avenues for waste streams, used oil, used lubricants, and other materials. Mr. Willis is expected to testify regarding the characterization of one of the hazardous waste streams treated and stored at the CIS facility, including communications with the United States Environmental Protection Agency and the Ohio Environmental Protections Agency at the start of the violations alleged in the Complaint in this matter. Mr. Willis is also expected to testify regarding the active involvement of Scott Forster in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.



**I. Troy Charpia**

Mr. Charpia was an employee during the relevant time period at Innovative Waste Management, Inc. (IWM) (a/k/a Innovative Resource Management) in Summerville, South Carolina. IWM buys and sells chemicals, offering generators alternative avenues for waste streams, used oil, used lubricants, and other materials. Mr. Charpia is expected to testify regarding the characterization of one of the hazardous waste streams treated and stored at the CIS facility, including communications with the United States Environmental Protection Agency and the Ohio Environmental Protections Agency at the start of the violations alleged in the Complaint in this matter. Mr. Charpia is also expected to testify regarding the active involvement of Scott Forster in the handling of hazardous wastes at CIS, including actively participating in the conduct that violated RCRA.

**J. Zygmunt Osiecki**

Mr. Osiecki was an environmental manager during the relevant time period at Neville Chemical Company (Neville). Neville is a manufacturer of synthetic hydrocarbon resins and coumarone-indene resins and is located in Pittsburgh, Pennsylvania. Mr. Osiecki is expected to testify regarding the active involvement of Eric Lofquist and Scott Forster in the handling of hazardous wastes, including personally analyzing whether or not a material is a solid waste or hazardous waste, and reviewing documents being submitted to the Ohio Environmental Protection Agency in an attempt to obtain approval for burning of material in a blast furnace.

Complainant respectfully reserves the right to expand or otherwise modify the scope, extent, and areas of testimony of any of these potential witnesses, where appropriate, and upon adequate notice to the Presiding Officer and Respondent. Complainant reserves the right to call any witnesses listed in Respondent's prehearing exchange. Complainant further reserves its right

to amend, supplement, and modify its witness list and to call additional witnesses on its behalf, upon adequate notice to the Presiding Officer and Respondent.

Should Complainant make any of the modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Prehearing Exchange, provide the Presiding Officer and Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

**II. A list of expert witnesses intended to be called at the hearing, a Curriculum Vitae for each expert, and a narrative summary of their expected testimony.**

Complainant may call any or all of the following individuals as witnesses in the hearing in this matter.

**A. Dr. Richard Fruehan**

Dr. Richard Fruehan holds the U.S. Steel-endowed Chair in the Department of Material Science and Engineering in the College of Engineering at Carnegie Mellon University (Pittsburgh, Pennsylvania). Dr. Fruehan is also the Co-Director of the Center for Iron and Steelmaking Research and the Associate Editor of *Metallurgical and Materials Transactions*. Dr. Fruehan is expected to testify about the process of steel making and specifically about the mechanics of a blast furnace, the physics and chemistry of reactions which occur in a blast furnace and injectants to the tuyere level of a blast furnace. Dr. Fruehan's curriculum vitae is attached as CX93.

**B. Gale Coad**

Gale Coad is a Principal at Industrial Economics Incorporated (Cambridge, Massachusetts). Ms. Coad has extensive experience in analyzing the financial condition of

individuals and businesses in the context of regulatory or enforcement actions. Ms. Coad is expected to testify regarding the ability of CIS, Scott Forster and Eric Lofquist to pay the proposed penalty. Ms. Coad will explain the methods used to analyze each Respondent's financial information, as well as the results of her analysis. Ms. Coad's resume is attached as CX92.

**C. Francis Awanya**

Francis Awanya is a Chemist at the U.S. EPA Region 5 Central Regional Laboratory. Mr. Awanya has extensive experience performing flashpoint analysis on materials. Mr. Awanya is expected to testify regarding the flashpoint of materials, include the mixture of two materials with different flashpoints. Mr. Awanya's resume is attached as CX90.

Complainant respectfully reserves the right to expand or otherwise modify the scope, extent, and areas of testimony of any of these potential expert witnesses, where appropriate, and upon adequate notice to the Presiding Officer and Respondent. Complainant reserves the right to call any expert witnesses listed in Respondent's prehearing exchange. Complainant further reserves its right to amend, supplement, and modify its expert witness list and to call additional expert witnesses on its behalf, upon adequate notice to the Presiding Officer and Respondent.

Should Complainant make any of the modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Prehearing Exchange, provide the Presiding Officer and Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

**III. A copy of each exhibit to be introduced into evidence at hearing, appropriately identified as Complainant's exhibit starting with identifier "CX-NUMBER"<sup>1</sup>.**

Complainant intends to introduce the following documents into evidence at hearing.

Copies of these documents are attached to this prehearing exchange.

- CX1 - 2/8/08 EPA Information Request to CIS
- CX2 - 3/27/08 CIS Information Request response to EPA (\*CBI)
- CX3 - 4/28/08 CIS Information Request response to EPA (\*CBI)
- CX4 - 4/28/10 EPA Information Request to CIS
- CX5 - 6/15/10 CIS Information Request response to EPA (\*CBI)
- CX6 - 3/4/09 EPA Information Request to GTI
- CX7 - 4/17/09 GTI Information Request response to EPA (\*CBI)
- CX8 - 4/27/09 EPA Information Request to IFF
- CX9 - 6/15/09 IFF Information Request response to EPA (\*CBI)
- CX10 - 2/12/10 EPA Information Request to IFF
- CX11 - 3/30/10 IFF Information Request response to EPA (\*CBI)
- CX12 - 4/28/09 EPA Information Request to IWM
- CX13 - 8/11/09 IWM Information Request response to EPA [NO COVER LETTER]
- CX14 - 7/7/09 EPA Followup Information Request to IWM
- CX15 - 5/20/09 IWM Information Request response to EPA
- CX16 - OMITTED
- CX17 - OMITTED
- CX18 - 7/31/07 EPA Information Request to JLM
- CX19 - 8/28/07 JLM Information Request response to EPA
- CX20 - 4/8/09 EPA Information Request to Neville
- CX21 - 6/8/09 Neville Information Request response to EPA (\*CBI REDACTED)
- CX22 - 1/15/10 Neville Information Request response to EPA
- CX23 - 12/12/05 EPA Information Request to WCI
- CX24 - 1/20/06 WCI Information Request response to EPA (\*CBI)
- CX25 - 5/20/08 EPA Information Request to WCI
- CX26 - 6/26/08 WCI Information Request response to EPA
- CX27 - 6/26/08 WCI (Squire Sanders) Information Request response to EPA
- CX28 - 9/23/08 EPA Inspection Report for WCI
- CX29 - 9/26/08 EPA Inspection Report for CIS
- CX30 - 2/8/08 EPA Notice of Violation to CIS
- CX31 - 4/28/08 CIS response to Notice of Violation (\*CBI)
- CX32 - 11/17/10 First Tolling Agreement
- CX33 - 1/12/11 Second Tolling Agreement
- CX34 - 2/17/11 Third Tolling Agreement
- CX35 - 8/31/10 Notice of Intent to File (CIS)
- CX36 - 10/26/10 Notice of Intent to File (Forster)
- CX37 - 11/9/10 Notice of Intent to File (Lofquist)
- CX38 - 1/7/11 Notice of Intent to File with Revised Penalty Figure (CIS)

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<sup>1</sup> Complainant notes that the exhibits containing CBI will be treated in accordance with 40 C.F.R. §22.5(d).

CX39 – 9/21/10 Response to Notice of Intent to File (\*CBI)  
 CX40 – 5/13/11 Complaint in CIS et al.  
 CX41 – 7/15/11 Answer in CIS et al.  
 CX42 – 8/31/10 State Notification (CIS)  
 CX43 – 10/26/10 State Notification (Forster)  
 CX44 – 11/9/10 State Notification (Lofquist)  
 CX45 – 1/9/07 facsimile from McConnell (OEPA) to Beedle (EPA) re: CIS RCRA  
 Notifications  
 CX46 – 5/10/07 Printout of CIS website  
 CX47 – 12/9/05 letter from Guerriero (EPA) to Willis (IWM)  
 CX48 – 8/11/04 CIS Articles of Incorporation  
 CX49 – 10/23/08 Information in U.S. v. General Environmental Management LLC and  
 Scott A. Forster, No.1:08CR441  
 CX50-11/5/08 Plea Agreement in U.S. v. Scott A. Forster, No.1:08CR441  
 CX51--11/5/08 Plea Agreement in U.S. v. General Environmental Management LLC,  
 No.1:08CR441  
 CX52 – 1/27/09 Judgment in U.S. v. Scott A. Forster, No.1:08CR441  
 CX53 – 11/5/08 Judgment in U.S. v. General Environmental Management LLC,  
 No.1:08CR441  
 CX54 – 3/24/11 Default Order and Initial Decision In the Matter of JLM Chemicals, Inc.,  
 No. RCRA-05-200900017  
 CX55-4/6/10 Letter from Senna (IFF) to Beedle (EPA)  
 CX56- 2/23/11 Letter from Levin (Herrick) to Eiber (Brouse) and Falbe (Quarles)  
 CX57-3/15/11 Letter from Levin (Herrick) to Eiber (Brouse) and Falbe (Quarles)  
 CX58-6/6/11 Letter from Leightner (IFF) to Garypie (EPA)  
 CX59 – 9/12/11 Notice of Violation (IFF)  
 CX60 – 9/29/11 IFF Response to EPA NOV  
 CX61-9/27/11 results from USPTO TARR web server for Unitene  
 CX62- 6/23/11 email from USPTO to IFF providing Official Action regarding Unitene  
 CX63-6/23/11 email from USPTO to IFF providing Notice regarding Unitene  
 CX64- USPTO Trademark/Service Mark Application, Principal Register regarding  
 Unitene  
 CX65-3/24/11 Application by IFF to USPTO regarding Unitene  
 CX66-2/16/84 EPA General Enforcement Policy #GM-21 (Policy on Civil Penalties)  
 CX67 - 2/16/84 EPA General Enforcement Policy #GM-22 (A Framework for Statute-  
 Specific Approaches to Penalty Assessments: Implementing EPA’s Policy on  
 Civil Penalties)  
 CX68 - 6/23/03 Memorandum from Suarez (EPA to various (EPA) regarding Revisions  
 to the 1990 RCRA Civil Penalty Policy  
 CX69-1/11/05 Memorandum from Kelley (EPA) to various (EPA) regarding Revised  
 Penalty Matrices for the RCRA Civil Penalty Policy  
 CX70-1/12/09 Gravity-based penalty matrix to supplement the RCRA Civil Penalty  
 Policy  
 CX71-1/28/11 Letter from DeJohn (Brouse) to Garypie (EPA) regarding Forster/Lofquist  
 (\*CBI)  
 CX72-2/18/11 Letter from DeJohn (Brouse) to Garypie (EPA) regarding CIS (\*CBI)

CX73-3/9/11 Letter from Garypie (EPA) to DeJohn (Brouse)  
 CX74 - 3/9/09 EPA Information Request to GTI  
 CX75 – 9/28/11 Real estate information regarding 17505 Lookout Drive  
 CX76-9/16/11 Real estate information regarding 17505 Lookout Drive  
 CX77-9/16/11 Real estate information regarding 16533 Chillicothe Road  
 CX78- 9/16/11 Real estate information regarding 30150 Bryce Road  
 CX79-9/16/11 Real estate information regarding 32421 Legacy Pointe Pkwy  
 CX80-2/16/10 Settlement Agreement and Release (CIS/Severstal) (\*CBI)  
 CX81-3/1/10 Equipment Lease (CIS/MSC) (\*CBI)  
 CX82-8/11/10 Consent and Assignment Agreement (MSC/CIS/Severstal) (\*CBI)  
 CX83-8/11/10 Addendum to Fuel and Oil Supply Agreement (MSC/Severstal) (\*CBI)  
 CX84-12/31/10 Asset Purchase Agreement (CIS/MSC) (\*CBI)  
 CX85-12/31/10 Equipment Lease Termination Agreement (CIS/MSC) (\*CBI)  
 CX86- 12/9/08 How a Blast Furnace Works (American Iron and Steel Institute)  
 CX87-August/September 2008 Emails between Michael Beedle (EPA) and Daniel Weiss  
 (Magnus)  
 CX88-5/11/94 EPA Headquarters Delegation 8-9-A  
 CX89-1/8/09 EPA Region 5 Delegation 8-9-A  
 CX90-C.V. Francis Awanya  
 CX91-Resume Michael Beedle  
 CX92-Resume Gail Coad  
 CX93-C.V. Richard Fruehan  
 CX94-December 1993 U.S. EPA Hazardous Waste Civil Enforcement Response Policy  
 CX95-November 1994 U.S. EPA Regulation of Fuel Blending and Related Treatment  
 and Storage Activities Memo  
 CX96-"Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or  
 Delayed Costs"  
 CX97-8/4/04 Notice of Violation issued by OEPA to GEM  
 CX98-8/24/05 Notice of Violation issued by OEPA to GEM  
 CX99-2/27/06 Complaint filed by State of Ohio against GEM, ESG, Eric Lofquist and  
 Scott Forster  
 CX100- 3/17/07 Settlement resolving 2/27/06 Complaint filed by State of Ohio against  
 GEM, ESG, Eric Lofquist and Scott Forster  
 CX101-4/20/06 National Response Center Report for GEM fire/release  
 CX102-4/20/06 Report on GEM fire/release by City of Cleveland Department of Public  
 Safety Division of Fire Prevention Bureau  
 CX103-4/24/06 U.S. EPA Pollution Report for GEM fire/release  
 CX104-5/9/06 Letter from Ohio Citizen Action to EPA Administrator regarding GEM  
 violations  
 CX105-7/17/06 Notice of Violation issued by U.S. EPA to GEM  
 CX106-8/21/06 Notice of Violation issued by OEPA to GEM and CIS  
 CX107-6/2/08 follow up to 8/21/06 Notice of Violation issued by OEPA to GEM and  
 CIS  
 CX108-2/17/09 Notice of Violation issued by OEPA to GEM and ESG  
 CX109-5/8/09 Notice of Violation issued by OEPA to RTT Ohio  
 CX110-6/18/08 Notice of Violation issued by OEPA to RTT Detroit

CX111-9/27/10 Notice of Violation issued by U.S. EPA to RTT Detroit  
CX112-10/12/11 Environmental Justice Analysis for CIS  
CX113-5/20/08 EPA Information Request to GEM  
CX114-6/25/08 GEM Information Request response to EPA (\*CBI)  
CX115-Penalty Narrative (\*CBI)

Complainant respectfully reserves the right to elect to not introduce any of the foregoing exhibits at the hearing and/or, in accordance with the Presiding Officer's prehearing order, to supplement its prehearing exchange with additional exhibits not listed above and will provide reasonable notice to the Presiding Officer and Respondent concerning any modifications to the above exhibit list.

**IV. Complainant's view as to the location of the hearing.**

As required by the Presiding Officer's Prehearing Order, Complainant requests that the hearing be located in Chicago, Illinois. In 2008 Carbon Injection Systems, LLC, (CIS) ceased operations at its facility, located in Warren, Ohio. See paragraph 5 of Respondents' Answer. Counsel for Complainant is located in downtown Chicago. Keven Eiber, co-counsel for Respondents, is located in Cleveland, Ohio, however; Lawrence Falbe, co-counsel for Respondents, is located in downtown Chicago. Furthermore, several of Complainant's witnesses are located in downtown Chicago.

**V. An estimate of time needed to present Complainant's case-in-chief.**

Complainant anticipates that it will need four (4) days to present its case in chief.

**VI. A copy of any reports of the inspection referenced in Paragraph 27 of the Complaint, and a copy of any photographs, videos, site maps, illustrations, analytical results, field notes, and/or records created or taken by the inspector during the inspection.**

The U.S. EPA Inspection Report associated with the inspection referenced in Paragraph 27 of the Complaint is attached at CX29.

**VII. A copy of any documents in support of those factual allegations denied or otherwise not admitted in Respondent's Answer.**

Please see the attached exhibits.

**VIII. Narrative statement explaining how the proposed penalty was calculated.**

The detailed summary of the manner in which the proposed penalty was calculated, with references to the provisions of the applicable penalty policy, appears in CX115, to which the Presiding Officer's attention is respectfully directed. As indicated above, Mr. Beedle is expected to present testimony regarding the calculation of the proposed penalty in this case, the consistency of the penalty with the applicable EPA policy, and the appropriateness of the penalty in this case. Mr. Beedle's resume is attached as CX91.

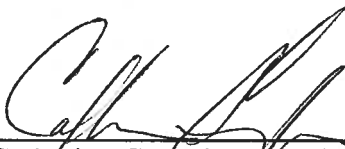
**VII. Reservation of Rights**

Complainant respectfully reserves the right to call all witnesses called by the Respondent, to recall any of its witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondents and the Presiding Officer.

Respectfully Submitted,

Counsel for EPA:

10/14/11  
Date



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Catherine Garypie, Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, IL 60622  
PH (312) 886-5825  
Email: garypie.catherine@epa.gov



J. Matthew Moore, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, IL 60622  
PH (312) 886-5932  
Email: [moore.matthew@epa.gov](mailto:moore.matthew@epa.gov)

**CERTIFICATE OF SERVICE**

**In the Matter of Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist  
Docket No. RCRA-05-2011-0009**

I certify that the foregoing "Complainant's Initial Prehearing Exchange", dated October  2011, was sent this day in the following manner to the addressees listed below:

Original and one copy hand-delivered to:

Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Copy via Regular Mail to:

Attorneys for Respondents:

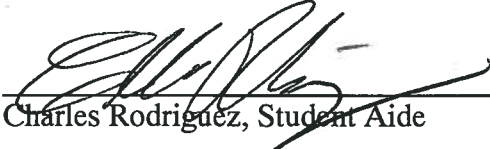
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
c/o Lawrence W. Falbe  
Quarles & Brady LLP  
300 N. LaSalle Street, Suite 4000  
Chicago, IL 60654

Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
c/o Keven D. Eiber  
Brouse McDowell  
600 Superior Avenue East  
Suite 1600  
Cleveland, OH 44114

Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W., Mail Code 1900L  
Washington, DC 20460

10/14/2011  
Date

  
Charles Rodriguez, Student Aide

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U.S. EPA REGION 5