

BROUSE McDOWELL
A LEGAL PROFESSIONAL ASSOCIATION

Keven Drummond Eiber
Attorney at Law
Direct Dial: 216.830.6816
keiber@brouse.com
Also admitted in:
Florida, Maryland and D.C.

600 Superior Avenue East
Suite 1600
Cleveland, OH 44114-2603
Office: 216.830.6830
Fax: 216.830.6807
388 S. Main Street
Suite 500
Akron, OH 44311-4407
Office: 330.535.5711
Fax: 330.253.8601
36901 American Way
Suite 2-B
Avon, OH 44011-4057
Office: 440.934.8080
Fax: 440.934.8115
www.brouse.com

November 3, 2011

VIA FEDERAL EXPRESS OVERNIGHT DELIVERY

United States EPA, Region 5
Office of Regional Hearing Clerk
Attn: La Dawn Whitehead
77 W. Jackson Blvd.
Mailcode: E-19J
Chicago, IL 60604-3590

RECEIVED
NOV - 4 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Re: *In re: Carbon Injection Systems LLC, Scott Forster and Eric Lofquist*
Docket No. RCRA 05-2011-0009

Dear Ms. Whitehead:

Enclosed please find an original and one copy of Carbon Injection Systems LLC, Scott Forster and Eric Lofquist's Initial Joint Prehearing Exchange. The exhibits for the prehearing exchange are being filed in CD-ROM format with the approval of Judge Biro's Staff Attorney Steven Sarno and counsel for Complainant.

Please note that due to confidential business information ("CBI") contained in certain of Respondents' exhibits, Respondents are filing under seal two CDs containing all exhibits, including CBI material, and are filing as well two CDs that have the CBI material redacted.

Please contact me if you have any questions or concerns.

Very truly yours,


Keven Drummond Eiber

Enclosures

cc: Chief Administrative Law Judge Susan L. Biro (with enclosures)
Larry Falbe, Esq. (with enclosures)
Catherine Garypie, U.S. EPA (with enclosures)
Matthew Moore, U.S. EPA (without enclosures)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

RECEIVED
NOV - 4 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.

In the Matter of:)

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

Respondents.)

Docket No. RCRA-05-2011-0009

**RESPONDENTS CARBON INJECTION SYSTEMS LLC, SCOTT FORSTER AND
ERIC LOFQUIST'S INITIAL JOINT PREHEARING EXCHANGE**

Respondents Carbon Injection Systems LLC ("CIS"), Scott Forster and Eric Lofquist ("Respondents"), through counsel, for their initial joint prehearing exchange, submit the following information:

A. Respondents' Initial Witness List

Respondents intend to defend against the allegations in the administrative complaint through the introduction of oral and documentary evidence, including expert opinion testimony, and also intend to cross examine the witnesses called by the Complainant United States Environmental Protection Agency ("Complainant" or "U.S. EPA"). Respondents' fact and expert witnesses are listed below. Respondents further reserve their right to seek discovery, including third-party discovery, and to supplement and/or amend their list of witnesses with adequate notice to Complainant and the Presiding Officer.

1. Fact Witnesses

a. Barry, Theresa. Ms. Barry was an environmental manager at International Flavors and Fragrances, Inc. (“IFF”) during the relevant time period. Ms. Barry is expected to testify regarding the regulatory analysis and decisions made by IFF in conjunction with its actions taken to develop and market the Unitene products. She also is expected to testify regarding the internal process changes that IFF undertook at its Augusta, Georgia plant (“Augusta Plant”) when it decided to isolate the distillate fractions that were later marketed as "Unitene" from the Augusta Plant's organic wastes, and sell those fractions as a useful, non-hazardous product. Ms. Barry also is expected to testify that IFF's Unitene products were never mixed with hazardous waste, identified as a waste, or discarded or handled as a waste.

b. Bentfield, Kenneth. Ken Bentfield was the Vice President of Sales and Marketing for CIS and for other companies owned by Magnus International Group, Inc. Mr. Bentfield will testify regarding the pricing of materials, how pricing is set and the overall volume of materials purchased by CIS and sold to the blast furnace operator during the relevant time period.

c. Charpia, Troy. Troy Charpia is a salesman for Innovative Waste Management (“IWM”), a broker of bulk industrial chemical materials. Mr. Charpia is expected to testify regarding the offering for sale to CIS, and the careful consideration to purchase by CIS, of various bulk chemical materials, and his communications with Scott Forster regarding potential sales. Mr. Charpia also will testify regarding the historical uses and markets for such materials generally. Mr. Charpia also will testify regarding efforts undertaken by IWM and CIS to obtain regulatory approval for the sale of K022 waste material from Georgia Gulf Chemicals

in Louisiana, and CIS's ultimate decision in early 2006 not to purchase K022 waste material in light of Ohio EPA's interpretation of the RCRA solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Charpia further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA.

d. DuRivage, Donald. Mr. DuRivage was the Environmental Health and Safety Manager at IFF's Augusta Plant during some or all of the relevant time period. Mr. DuRivage was involved with, and is expected to testify regarding the regulatory analysis and decisions made by IFF in conjunction with its actions taken to develop and market the Unitene products. Mr. DuRivage is also expected to testify regarding the internal process changes that IFF undertook at the Augusta Plant when it decided to isolate the distillate fractions that were later marketed as "Unitene" from the Augusta Plant's organic wastes, and sell those fractions as a useful, non-hazardous product, and the pricing of that material. Mr. DuRivage is also expected to testify regarding his knowledge of the intended use of the Unitene products by CIS, i.e., use as an ingredient for the manufacture of iron in a blast furnace.

e. Gephart, Robert. Robert Gephart is the Vice President of Sales at Geptek, Inc., a broker of bulk industrial chemical materials. Mr. Gephart will testify regarding the historical uses and markets for such materials generally. Mr. Gephart will testify regarding the offering for sale to CIS, and the consideration to purchase by CIS of material manufactured by JLM Chemicals, Inc., in 2005, and CIS's subsequent decision not to purchase the material. Mr. Gephart further will testify regarding his understanding, in 2005, that the sale of the JLM

material for use or reuse as an ingredient in an industrial process to make a product (production of iron), or as an effective substitute for a commercial product, did not violate RCRA. Mr. Gephart further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA.

f. Guido, Tom. Mr. Tom Guido was the facility manager of the Augusta Plant, during all or some of the relevant time period. Mr. Guido is expected to testify regarding the internal process changes that IFF undertook at the Augusta Plant when it decided to isolate the distillate fractions that were later marketed as "Unitene" from the Augusta Plant's organic wastes, and sell those fractions as a useful, non-hazardous product. Mr. Guido is also expected to testify that IFF's Unitene products were never mixed with hazardous waste, identified as a waste, or discarded or handled as a waste.

g. Klodnick, Keith. See description of Mr. Klodnick's combined fact and expert testimony, below.

h. Lloyd, Russell. Russell Lloyd is a principal of Innovative Waste Management ("IWM"), a broker of bulk industrial chemical materials. Mr. Lloyd will testify regarding the historical uses and markets for such materials generally. Mr. Lloyd is expected to testify regarding efforts undertaken by IWM and CIS to obtain regulatory approval for the sale of K022 waste material from Georgia Gulf Chemicals in Louisiana, and CIS's ultimate decision in early 2006 not to purchase K022 waste material in light of Ohio EPA's interpretation of the solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Lloyd further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the

handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA.

i. Lofquist, Eric. Respondent Mr. Lofquist is the vice president of CIS. Mr. Lofquist will testify regarding the formation and history CIS, the nature of its business operations, and its good regulatory compliance history. In addition, Mr. Lofquist will testify regarding the CIS's investigation into the possible purchase of certain hazardous waste streams, and ultimate decision not to purchase such materials.

j. Malecki, Robert. Robert Malicki was the Operations Manager of CIS. Mr. Malecki will testify regarding the overall operations of CIS, including the specifications for the materials use in the blast furnace. He also will testify that the materials purchased by CIS met blast furnace specifications and required no further processing. Mr. Malecki also will testify regarding tank cleaning and inspection at the facility, as well as CIS's Waste Analysis Plan and CIS's Contingency Plan.

k. Murray, Rick. Rick Murray is the principal of Aqua Fuels. Aqua Fuels is in the business of buying and selling bulk industrial materials. Aqua Fuels sold CIS two Unitene products manufactured by IFF which are the subject of the administrative complaint. Mr. Murray will testify regarding his knowledge of the manufacturing of the products, the marketing and sale of the products by IFF and Aqua Fuels, and the shipment of the products to CIS's Ohio facility. Mr. Murray also will testify regarding the market for such products generally.

l. Osiecki, Zygmunt. Zygmunt Osiecki is employed by Neville Chemical Company, a manufacturer of bulk industrial chemical materials. Mr. Osiecki is expected to testify regarding efforts undertaken by Neville Chemical Company and Respondents to obtain regulatory approval for the sale of a characteristic hazardous waste material (recovered oil), and

CIS's ultimate decision not to purchase the material in light of Ohio EPA's interpretation of the solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Osiecki further will testify that Neville Chemical Company did not ship any hazardous waste materials to the CIS facility. Mr. Osiecki further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA.

m. Prementine, Joseph. See description of Mr. Prementine's combined fact and expert testimony, below.

n. Shepard, David. Mr. David Shepard succeeded Mr. DuRivage at the Augusta Plant in or about 2008. Mr. Shepard is expected to testify similarly to Mr. DuRivage, as noted above.

o. Willis, Ernie. Ernie Willis is employed by IWM, a broker of bulk industrial chemical materials. Mr. Willis will testify regarding the historical uses and markets for such materials generally. Mr. Willis is expected to testify regarding efforts undertaken by IWM and CIS to obtain regulatory approval for the sale of K022 waste material from Georgia Gulf Chemicals in Louisiana, and CIS's ultimate decision in early 2006 not to purchase K022 waste material in light of Ohio EPA's interpretation of the solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Willis further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA.

2. Expert Witnesses

a. Klodnick, Keith. Mr. Klodnick is a certified public accountant. He received his B.S. in accounting at The Ohio State University. Mr. Klodnick currently is the Partner-in-Charge of Accounting & Auditing at Cohen & Company. Mr. Klodnick's curriculum vitae is attached as RX65. Mr. Klodnick will testify, both as a fact witness and as an expert, regarding the financial status of CIS and the company's ability to pay the proposed penalty for the alleged violations.

b. McClure, Christopher. Mr. Christopher McClure is a Director in the Chicago office of Crowe Horwath, an international accounting and consulting firm. He holds an MBA from the Kellogg School of Management and an undergraduate degree in accounting and finance from Trinity University. Mr. McClure has been a CPA since 1997 and is a Certified Fraud Examiner. Mr. McClure has extensive experience in environmental enforcement matters, having worked on multiple penalty cases and served as an expert witness in two Illinois Pollution Control Board hearings. Mr. McClure will present testimony regarding the appropriate calculations of the BEN and Beyond BEN components of the proposed civil penalty in this case. He will address the correct cost variables, discount rate, profits, potential offsets due to compliance activities performed by CIS, and other issues related to the proposed penalty. Mr. McClure also will discuss the impacts on the penalty calculations of the compliance alternatives available to CIS. Mr. McClure also may testify regarding the financial status of CIS and the company's ability to pay the proposed penalty for the alleged violations. Mr. McClure's curriculum vitae is attached as RX53.

c. Poveromo, Joseph J. Dr. Joseph J. Poveromo is the principal of RMI (Raw Materials & Ironmaking) Global Consulting. Dr. Poveromo consults with a wide range of

clients on issues related to ironmaking raw materials and on the improvement of blast furnace operations and the process/economic assessment of operating and marketing strategies. Dr. Poveromo is an internationally recognized steel industry authority on the technical and economic aspects of ironmaking (blast furnace and direct reduction), ironmaking raw materials (iron ore, coke) including sintering and pelletizing processes, and iron ore mining. Dr. Poveromo obtained his B.S. in Chemical Engineering from Rensselaer Polytechnic Institute in 1968 and his Ph.D. (1975) and M.S. (1972) in Chemical Engineering at the Center for Process Metallurgy, State University of New York at Buffalo. Dr. Poveromo's curriculum vitae is attached as RX52. Dr. Poveromo will testify regarding the utilization of various liquid carbon and hydrocarbon raw materials for iron ore reduction in a blast furnace for making iron.

d. Prementine, Joseph. Mr. Prementine is employed by Construction and Maintenance Management, Inc. ("CMM, Inc."), which designed the tanks and piping systems at CIS's Warren, Ohio facility. Since construction, CMM, Inc. also has performed tank inspections and piping system inspections. Mr. Prementine will provide fact and expert testimony regarding the construction, inspection, and integrity of the tank and piping systems at the CIS facility and whether those systems have met applicable standards. Mr. Prementine's curriculum vitae is attached as RX69.

e. Frederick Rorick. Mr. Rorick is the president of Rorick, Inc., which provides consulting services to steel industry and governmental clients, and litigation support services, primarily in the area of technical and operational aspects of ironmaking. Mr. Rorick has over 40 years of experience in ironmaking and blast furnace operations. From 1990 to 1995, Mr. Rorick was the Chairman of the American Iron and Steel Institute Technical Committee on Ironmaking, in 1997 he was named North American representative to the European Blast

Furnace Committee, and in March 2001 was the recipient of the Thomas L. Joseph Award for Lifetime Achievement in Ironmaking presented by the Iron and Steel Society and the A.I.M.E. Mr. Rorick's curriculum vitae is attached as RX45. Mr. Rorick will testify regarding blast furnace operations, and the utilization of liquid carbon and hydrocarbon raw materials for iron ore reduction.

f. Sass, Bruce. Dr. Bruce M. Sass has over 20 years experience as a physical chemist in a variety of capacities. Dr. Sass has extensive experience with terpenes and terpene-related compounds and, among other work, has evaluated them for heat value as biofuels and other applications. Dr. Sass is expected to testify regarding the historical and contemporary use of terpenes, their chemical structure, fuel properties and characteristics, and industrial/commercial uses. Dr. Sass is also expected to testify regarding the properties and composition of the Unitene products purchased from IFF by CIS. Dr. Sass's curriculum vitae is attached as RX75.

B. Respondents' Initial Exhibit List

Respondents incorporate by reference as if fully set forth herein the list of Complainant's exhibits set forth in its Initial Prehearing Exchange. Respondents may present any or all of such exhibits in their defense. Complainant's exhibits have been produced by Complainant and therefore are not being separately produced by Respondents. In addition, Respondents identify, and produce contemporaneously with this Initial Joint Prehearing Exchange, the following joint Respondents' exhibits:

RX1: State of Ohio Articles of Organization for Carbon Injection Systems LLC

RX2: September 7, 2010 Letter from Ohio EPA to Scott Forster

RX3: July 8, 2008 Letter from Eric Lofquist to Ohio EPA *CBI

- RX4: September 26, 2005 Letter from Scott Forster to Ohio EPA
- RX5: September 18, 2006 Letter from Eric Lofquist to Ohio EPA
- RX6: August 18, 2006 Letter from Eric Lofquist to U.S. EPA
- RX7: October 7, 2010 Letter from Meagan DeJohn to U.S. EPA
- RX8: October 15, 2010 Letter from Meagan DeJohn to U.S. EPA
- RX9: April 3, 2009 Letter from Scott Forster to Ohio EPA
- RX10: August 26, 2008 Letter from Mark F. Daniels to Rob Slater
- RX11: May 3, 2006 Letter from Eric Lofquist to Frank Jackson
- RX12: September 12, 2008 Letter from Frank Schuschu to Scott Forster
- RX13: April 21, 2006 EA Group Laboratory Analytical report for GEM Emergency Response
- RX14: *Ohio v. General Environmental Management*, Case No. 2006 CV 585239, Agreed Interim Order
- RX15: *Ohio v. General Environmental Management*, 2006 CV 585239, Second Agreed Interim Order
- RX16: *Ohio v. General Environmental Management*, 2006 CV 585239, Consent Order and Final Judgment Entry
- RX17: *Ohio v. General Environmental Management*, 2006 CV 585239, Defendant's Unopposed Motion to Terminate Consent Order and Order granting motion
- RX18: Environmental Compliance History Fact Sheet
- RX19: Chart of CIS Vendor's product and pricing *CBI
- RX20: CIS Customer Invoices *CBI
- RX21: Monthly CIS Invoices to WCI for 2006 *CBI
- RX22: Monthly CIS Invoices to WCI for 2007 *CBI
- RX23: Monthly CIS Invoices for WCI for 2008 *CBI
- RX24: Trademarkia Trademark Summary of Arizona Chemicals Sylvablend product

- RX25: Safety Data Sheet for Sylvablend 145M, Rosin
- RX26: Material Safety Data Sheet for Sylvablend SC100
- RX27: Material Safety Data Sheet for Sylvablend FR-2235
- RX28: Trademarkia Trademark Summary of Crowley Tar Products Company Inc.'s Rosintene Product
- RX29: Trademarkia Trademark Summary of Union Camp Corporation's Unitene Product
- RX30: Chart of Trademarked Products Similar to IFF's Unitene Product
- RX31: International Flavors & Fragrances Inc. company description
- RX32: Wikipedia articles about limonene and terpene
- RX33: Asiaron article and description of Dipentene
- RX34: July 9, 1992 Regulatory Guidance Letter from U.S. EPA to John C. Chambers
- RX35: Regulatory Guidance Letter from U.S. EPA to Christopher Jones, Director of Ohio EPA
- RX36: Regulatory Guidance Letter from U.S. EPA to John C. Chambers
- RX37: January 31, 1995 Regulatory Guidance Letter from U.S. EPA to Bruce Gelber
- RX38: November 4, 1993 Regulatory Guidance Letter from U.S. EPA to Susan Ferguson
- RX39: Co-Product and Comparable Fuel Determination for "Fuel Blend #1," January 2005
- RX40: List of CIS's suppliers, by product code ***CBI**
- RX41: Invoices from Aqua/Fuel Services, Inc. for Unitene AGR ***CBI**
- RX42: Invoices from Aqua/Fuel Services, Inc. for Unitene LE ***CBI**
- RX43: Laboratory analysis for JLM Chemicals product
- RX44: November 21, 2005 Shipping Record for Residue Column Bottoms shipped from JLM Chemicals, Inc. to CIS
- RX45: C.V. of Frederick C. Rorick, Jr.

- RX46: PowerPoint Presentation: Coke and Injectants in the Blast Furnace, Are they Chemicals Raw Materials or Fuels, from a Scientific and Technological Point of View?
- RX47: PowerPoint Presentation: What is a Blast Furnace?
- RX48: Photograph of former CIS facility
- RX49: Photograph of former CIS facility
- RX50: Photograph of former CIS facility
- RX51: Photograph of former CIS facility
- RX52: C.V. of Joseph J. Poveromo
- RX53: C.V. of Christopher McClure
- RX54: McClure BEN Analysis *CBI
- RX55: Advisory of the Illegal Competitive Advantage Economic Benefit Advisory Panel
- RX56: *Agency of Natural Resources v. Deso* (1999), 72 F.Supp.2d 810.
- RX57: Article of Allegheny Ludlum Case
- RX58: Article on Massey Energy
- RX59: Article on New Portland Meadows Case
- RX60: BEN User's Manual
- RX61: Brattle Group Comments
- RX62: EPA's Action on BEN
- RX63: Article: The User of the Discount Rate in EPA Enforcement Actions
- RX64: *USA v. WCI Steel Inc.* Case No. 01-532, Supreme Court of Vermont
- RX65: C.V. of Keith D. Klodnick, CPA
- RX66: 2010 U.S. Income Tax Return for Carbon Injection Systems, LLC *CBI
- RX67: September 21, 2010 Letter from Meagan DeJohn to U.S. EPA *CBI

RX68: February 18, 2011 Letter from Meagan DeJohn to U.S. EPA *CBI

RX69: C.V. for Joseph Prementine

RX70: Warren Fire Department Application to Install Tanks

RX71: CIS Facility Tank and Piping installation, testing and inspection records

RX72: CIS Contingency Plan

RX73: CIS Used Oil Analysis Plan

RX74: 2005-2009 Time Line of Significant Events

RX75: C.V of Bruce Sass

RX76: Article: We Need Advanced Biofuels

RX77: Allylix Partners; Expand, Develop and Commercialize High Value Terpenes

RX78: Amyris Biotechnologies Article: Biofuels that are More Like Fuels

RX79: Article: What is Citronella Torch Fuel?

RX80: Alaska Science Forum: Diesel Trees, Article # 358

RX81: Engine Fuel Compositions Patent

RX82: Hydrocarbon Fuel Patent Summary

RX83: Article: More Fuel Like Biofuel, Producing Biofuels that Actually Resemble Gasoline

RX84: Article: Researchers Receive Grant to Study use of Pine Tree Chemical in Biofuel

RX85: Article: Identification and Microbial Production of Terpene Based Advanced Biofuels

RX86: Fact Sheet: Terpene Cleaners Used for Industrial Cleaning

RX87: Regulatory Guidance Letter from U.S. EPA to Richard Wasserstrom

RX88: U.S. EPA RCRA Orientation Manual

RX89: Regulatory Guidance Letter from U.S. EPA to Dale Gable

- RX90: November 25, 1992 Regulatory Guidance Letter from U.S. EPA to David Bozaan
- RX91: July 31, 1989 Regulatory Guidance Letter from U.S. EPA to Joe Haake
- RX92: December 23, 1986, Regulatory Guidance Letter from U.S. EPA to Francis Corden
- RX93: November 1986, U.S. EPA RCRA/Superfund Hotline Monthly Summary
- RX94: March 19, 1986, U.S. EPA Regulatory Guidance Letter from U.S. EPA to Joan Keenan
- RX95: January 16, 2008 JLM Notice of Violation Response from Scott Macdonald to Michael Beedle
- RX96: Article: Summary Evaluations and Assessment of Carbon and Hydrocarbon Raw Materials for Iron Ore Reduction
- RX97: Article: Blast Furnace Fuel Injection Trends
- RX98: PowerPoint Presentation: Fuel Injection in the Blast Furnace

In addition to the above referenced exhibits, Respondents also may rely on the following Federal Register publications (copies of which are not included): 63 FR 33782, 76 FR 15456, 50 FR 14216, 50 FR 614, and 76 FR 44094.

To the extent that documents support Respondents' denials of the factual allegations as set forth in their answer, those documents are included among the exhibits identified in Complainant's Initial Prehearing Exchange and in Respondents' Initial Joint Prehearing Exchange. The specific exhibits that support each of Respondents' denials are too numerous to list because Respondents' denials to most of Complainant's specific allegations are premised on their general denials (1) that any of the products that are the subject of this administrative proceeding were hazardous wastes being burned for energy recovery and (2) that Respondents Scott Forster and Eric Lofquist were, individually, owners or operators. Accordingly, virtually all of the exhibits, taken together, support Respondents' denials of the specific allegations in the

complaint. In addition, Complainant's practice of designating thousands of pages of documents as a single exhibit makes designating specific exhibits of no practical utility. Presumably, for the same reason, Complainant states in its Initial Prehearing Exchange, merely, "[p]lease see the attached exhibits," and does not undertake to specify any documents among its voluminous production that it claims support the factual allegations denied by Respondents. Respondents reserve their right to offer any of the Complainant's exhibits and Respondents' exhibits in support of any aspect of their defense. Respondents further reserve their right to seek discovery, including third-party discovery, and to supplement and/or amend their list of exhibits with adequate notice to Complainant and the Presiding Officer.

Subject to and without waiver of its general statement and reservations, above, Respondents identify the following exhibits as supporting certain of their denials in their answer:

- Exhibits CX48 and RX1 support Respondents' denial in paragraph 5 of their answer, that CIS is a corporation.
- Exhibits CX82 through CX85, and the WCI Supply Agreement which is included in CX3, support Respondents' denials in paragraphs 11, 15 and 16 of their answer, regarding the ownership and leasing of the facility.
- Process diagrams, memoranda, e-mail messages, and shipping records produced by IFF contained in CX9 and CX11, and CX55 through CX60, support Respondents' denials in paragraphs 21 through 25, 28, 30, 31, 74, 75 and 77, of their answer, and any other denials elsewhere in their answer, regarding the presence of D001, D035, F003 and F005 wastes at the CIS facility.
- Exhibits CX7, CX13, CX15, CX19, CX22, RX43-44, RX46, and RX47 support the denials contained throughout Respondents' answer regarding the presence of hazardous wastes, including K022 wastes, at the CIS facility.
- Exhibits CX30 and CX31 support Respondents' denial in paragraph 32 of their answer.
- Exhibits CX72, CX80-85, and RX66-68 support Respondents' denials in paragraphs 41 and 46 of their answer.

- Exhibits CX24 and RX71 supports Respondents' denial in paragraph 88 of their answer.
- Exhibits RX2 through RX18, RX19 through RX23, RX40 through RX42, RX54 through RX64, RX70 through RX73, and RX74 support Respondents denials in paragraphs 97 and 98 of their answer regarding Complainant's determination of its proposed civil penalty.

C. Location and Time for Hearing

Respondents believe the most appropriate location for the hearing is in Cleveland, Cuyahoga County, Ohio. 40 C.F.R. § 22.21(d), which incorporates 40 C.F.R. § 22.19(d), provides that the location of the hearing shall be in the county where the respondent resides or conducts the business which the hearing concerns. Alternatively, the hearing may be held in the city where U.S. EPA Region V is located, or in Washington, D.C.

Respondents Eric Lofquist and Scott Forster both maintain their regular business offices in Cleveland, Cuyahoga County, Ohio and both reside in the greater Cleveland area. The corporate offices of Carbon Injection Systems LLC were at all times located in Cleveland, Cuyahoga County, Ohio. Cleveland, Ohio is the most convenient location for the greatest number of witnesses in the case, including two of U.S. EPA's witnesses who are located in Pittsburgh, PA, which is only a two-hour drive from Cleveland. In contrast, only three witnesses are located in the Chicago metropolitan area. For the vast majority of witnesses, who will be required to travel from locations other than Cleveland or Chicago, Cleveland is more convenient and considerably less expensive, in terms of available flights, proximity of the airport to downtown, and the cost of local transportation and hotels.

Respondents anticipate that they will require two weeks (10 business days) to present their defense. No translation services are necessary.

D. Respondents' Affirmative Defenses

1. With respect to Respondents' first, fifth and seventh affirmative defenses, the gravamen of U.S. EPA's complaint against CIS is that JLM Chemicals, Inc. and IFF failed to characterize and identify their hazardous wastes that they each sold to CIS, and shipped from CIS's Warren Ohio facility without hazardous waste manifests, all in violation of RCRA. In addition, U.S. EPA claims that certain otherwise applicable RCRA exemptions do not apply with respect to the shipments because CIS's customer, the owner of a blast furnace, allegedly "burned" the material for energy recovery. JLM Chemicals, Inc., IFF and the owner of the blast furnace are not parties to this proceeding. The middlemen who brokered the sales of the materials in question also are not parties. Nonetheless, these other parties, not CIS, are in possession and control of the most critical information regarding the characterization of the products they manufactured and sold to CIS. U.S. EPA's approach to the situation, which it claims is of great concern to U.S. EPA, is to single out the now-defunct CIS, which hasn't purchased any of the materials in question for years. U.S. EPA's preferred strategy appears to be one of "divide and conquer." The effect of this, however, is to unfairly disadvantage Respondents, who have limited opportunities for third party discovery in administrative proceedings. Because the actions of JLM Chemicals, IFF, the other middlemen and the owner of the blast furnace are inextricably intertwined, CIS contends that U.S. EPA's selective enforcement against CIS alone is an abuse of its enforcement discretion.

2. With respect to Respondents' second affirmative defense, Respondents first received notice that U.S. EPA claimed that CIS had allegedly received a hazardous waste material at its Warren, Ohio facility, in February 2008. The material that allegedly was received was a shipment of K022 waste from JLM Chemicals, Inc., which single shipment had been

received by CIS over two years earlier. Also in February 2008, U.S. EPA requested information regarding other materials purchased by CIS, but it did not ask about any materials purchased from IFF. Subsequently, over two years later, in 2010, U.S. EPA requested information from CIS regarding numerous suppliers of feedstock to CIS's Warren facility, including IFF, but did not allege that the products CIS was purchasing from IFF were hazardous wastes. In late 2010, when U.S. EPA served its notice of intent to bring this administrative action, it did not identify any products purchased by IFF as forming the basis for its non-compliance allegations or its penalty demand; nor does the complaint in this matter assert that IFF's products are the subject of the alleged non-compliance. During the extended period of time that U.S. EPA conducted its investigation, documents regarding CIS's purchases from IFF were not retained, such as correspondence and electronic communications with brokers regarding the purchases from IFF, CIS's sampling, analysis and approval of IFF's products, and other documents which CIS believes would support its defense of this matter. U.S. EPA acted with the intent not only to unfairly prevent CIS from successfully defending against the allegations of non-compliance, but also prevented CIS from addressing the conduct of its operations that U.S. EPA now claims should subject it to significant multi-day and gravity-based penalties.

E. Ability to Pay

Respondents will demonstrate that CIS, which no longer is an operating business and has no assets, has no ability to pay U.S. EPA's proposed penalty. Exhibits CX72, CX80-85, and RX66-68 support Respondents' ability-to-pay defense with respect to Respondent CIS. Respondents do not intend to present any evidence at the hearing regarding Scott Forster's or Eric Lofquist's ability to pay a civil penalty.

Respectfully submitted,



Keven Drummond Eiber
Meagan L. Moore
BROUSE MCDOWELL
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114
Tel: (216) 830-6816
Fax: (216) 830-6807
keiber@brouse.com
mmoore@brouse.com

Lawrence W. Falbe
QUARLES & BRADY LLP
300 N. LaSalle Street, Suite 4000
Chicago, IL 60654
Tel: (312) 715-5223
Fax: (312) 632-1792
larry.falbe@quarles.com

*Attorneys for Respondents Carbon Injection
Systems LLC, Eric Lofquist and Scott Forster*

RECEIVED

NOV - 4 2011

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

CERTIFICATE OF SERVICE

I certify that the foregoing Respondents Carbon Injection Systems LLC, Scott Forster and Eric Lofquist's Initial Prehearing Exchange was sent by Federal Express Overnight Delivery Service on November 3, 2011, to the following:

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

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

Catherine Garypie
Matthew Moore
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60622

RECEIVED
NOV - 4 2011
**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

11-3-2011
Date



Keven Drummond Eiber