

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Carbon Injection Systems LLC; )  
Scott Forster, President; )  
Eric Lofquist, Vice President )  
Gate #4 Blast Furnace Main Ave )  
Warren Township, OH 44483 )  
)  
EPA ID No. OHR000127910 )  
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Respondents. )  
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Docket No. RCRA-05-2011-0009  
Proceeding to Assess a Civil Penalty  
Under Section 3008(a) of the Resource  
Conservation and Recovery Act,  
42 U.S.C. § 6928(a)  
HEARING REQUESTED

RECEIVED  
APR 20 2012  
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

RESPONDENTS CARBON INJECTION SYSTEMS LLC, SCOTT FORSTER,  
AND ERIC LOFQUIST'S ANSWER TO U.S. EPA'S FIRST AMENDED  
COMPLAINT AND COMPLIANCE ORDER

Preliminary Statement

1. This is an administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).

ANSWER

Respondents admit that the Complainant has instituted this administrative action pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

ANSWER

Respondents admit that the Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

**ANSWER**

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint, and therefore deny each and every allegation in paragraph 3 of the Complaint.

4. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

**ANSWER**

Respondents admit that jurisdiction is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

5. Respondents are Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist. Carbon Injection Systems LLC, is a limited liability company doing business in the State of Ohio. Hereinafter the term Respondents is used both collectively and alternatively to refer to all or any one of the three persons named above.

**ANSWER**

Respondents admit Carbon Injection Systems LLC (“CIS”) is a limited liability company formed under the laws of the state of Ohio. Respondents deny certain remaining allegations in paragraph 5 of the Complaint. Carbon Injection Systems LLC no longer is doing business in the state of Ohio. CIS, Eric Lofquist and Scott Forster admit that each of them is named as a respondent by Complainant, but deny that they are the proper respondents and deny that Complainant has joined in this administrative proceeding all respondents necessary for a just determination of this administrative proceeding.

**Statutory and Regulatory Background**

6. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

**ANSWER**

Respondents state that the provisions of 40 C.F.R. Parts 260 through 279 speak for themselves.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

**ANSWER**

Respondents state that the provisions of Section 3006 of RCRA, 42 U.S.C. § 6926, RCRA Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) and Section 3008 of RCRA, 42 U.S.C. § 6928 speak for themselves.

8. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989). U.S. EPA has granted authorization for several changes to the Ohio RCRA program since 1989. 56 Fed. Reg. 14203 (April 8, 1991); 60 Fed. Reg. 38502 (July 27, 1995); 61 Fed. Reg. 54950 (October 23, 1996); 68 Fed. Reg. 3429 (January 24, 2003); 71 Fed. Reg. 3220 (January 20, 2006), and; 72 Fed. Reg. 61063 (October 29, 2007). Recently, relevant sections of the Ohio Administrative Code were revised, effective September 10, 2010, but U.S. EPA has not yet granted authorization for those changes to the Ohio RCRA program.

**ANSWER**

Respondents state the provisions of Section 3006(b) of RCRA, 42 U.S. C. §6926(b) speak for themselves. Respondents admit that U.S. EPA has granted authorization for several changes to the Ohio RCRA program since 1989. Respondents are without knowledge or information sufficient to form a belief as to the truth of whether U.S. EPA has granted authorization for recent changes to the Ohio RCRA program, and therefore deny this allegation.

9. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

**ANSWER**

Respondents state the provisions of Section 3008(a) of RCRA, 42 U.S. C. §6928(a) speak for themselves.

10. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

**ANSWER**

Respondents state the provisions of Section 3008 of RCRA, 42 U.S. C. §6928, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19 speak for themselves.

**General Allegations**

11. Respondent Carbon Injection Systems LLC operated a facility located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio (the "Facility") from May 2005 to March 2010 pursuant to the terms of a lease with WCI Steel, Inc. Equipment at the Facility was leased starting March 1, 2010 by Respondent Carbon Injection Systems LLC to Main Street Commodities LLC, and sold on December 31, 2010 by Respondent Carbon Injection Systems LLC to Main Street Commodities LLC. Main Street Commodities, LLC, a limited liability company is associated with Respondents Scott Forster and Eric Lofquist, now operates the Facility.

**ANSWER**

Respondents admit CIS operated a facility located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio from May 2005 to March 2010. Respondents also admit CIS had a lease with WCI Steel, Inc. Respondents admit the equipment at the former CIS facility was leased to Main Street Commodities March 1, 2010 and later purchased by Main Street

Commodities on December 31, 2010. Respondents admit Main Street Commodities, LLC. is a limited liability company currently operating at the former CIS Facility. Respondents deny all remaining allegations in paragraph 11.

12. Respondent Scott Forster, President, operated the Facility from May 2005 to March 2010.

**ANSWER**

Respondents deny that Scott Forster, President, operated the Facility from May 2005 to March 2010.

13. Respondent Eric Lofquist, Vice President, operated the Facility from May 2005 to March 2010.

**ANSWER**

Respondents deny that Eric Lofquist, Vice President, operated the Facility from May 2005 to March 2010.

14. Respondents were and are "persons" as defined by OAC 3745-50-10(A)(88), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

**ANSWER**

Respondents admit that they were and are "persons" as defined by OAC 3745-50-10(A)(88), 40 C.F.R. §260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

15. During the relevant time period, Respondents were "owners" or "operators," as those terms are defined under OAC 3745-50-10(A)(83) and (84) [40 C.F.R. § 260.10], of a facility located at Gate #4, Blast Furnace, Main Avenue, Warren, Ohio.

**ANSWER**

Respondents deny certain allegations in paragraph 15 of the complaint. Respondents Scott Forster and Eric Lofquist deny they were "owners" or "operators" as those terms are defined under OAC 3745-50-10(A)(83) and (84) [40 C.F.R. § 260.10], of a facility located at Gate #4, Blast Furnace, Main Avenue, Warren, Ohio. Respondent CIS admits it was an

“operator” as that term is defined under OAC 3745-50-10(A)(83) and (84) [40 C.F.R. § 260.10], of a facility located at Gate #4, Blast Furnace, Main Avenue, Warren, Ohio during the relevant time period, but denies it was an “owner” of a facility located at Gate #4, Blast Furnace, Main Avenue, Warren, Ohio.

16. Respondents owned or operated the Facility from at least May 2005 to March 2010.

**ANSWER**

Assuming Complainant intended to use the regulatory definitions of owned and operated, Respondents deny certain allegations in paragraph 16 of the Complaint. Respondent CIS admits it operated the Facility from at least May 2005 to March 2010 but denies it owned the Facility. Respondents Scott Forster and Eric Lofquist deny they owned or operated the Facility from at least May 2005 to March 2010.

17. Activities conducted by Respondents at the Facility include blending used oil streams; blending used oil with virgin fuel products; blending used oil to meet fuel specifications; and marketing on-specification used oil fuel to a consumer.

**ANSWER**

Respondents admit activities conducted by CIS at the Facility include blending used oil streams; blending used oil with virgin oil products; blending used oil to meet specifications; and marketing on-specification used oil to a consumer. Respondent CIS denies all other allegations contained in paragraph 17 of the Complaint.

18. On or about February 25, 2005, Respondent Carbon Injection System, LLC, notified the Ohio Environmental Protection Agency (“OEPA”) of its status as a used oil processor and a marketer pursuant to OAC 3745-279-51 [40 C.F.R. § 279.42].

**ANSWER**

Respondents admit on or about February 25, 2005, CIS notified the Ohio Environmental Protection Agency (“OEPA”) of its status as a used oil processor and a marketer pursuant to OAC 3745-279-51 [40 C.F.R. § 279.42].

19. At all times relevant to this Complaint, Respondents’ Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating and storing hazardous waste.

**ANSWER**

CIS denies the Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating and storing hazardous waste. Subject to and without waiving their denials to previous allegations in the Complaint regarding the ownership and operation of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 19 of the Complaint.

20. Respondents’ Facility was a “facility,” as that term is defined under OAC 3745-50-10(A)(39) [40 C.F.R. § 260.10].

**ANSWER**

Respondents deny the Facility was a “facility,” as that term is defined under OAC 3745-50-10(A)(39) [40 C.F.R. §260.10].

21. At all times relevant to this Complaint, Respondents held K022, D001, D035, F003 and F005, discarded materials, in 18,000-20,000 gallon tanks before the material was transferred from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

**ANSWER**

CIS denies that at all times relevant to the Complaint it held K022, D001, D035, F003 and F005, discarded materials, in 18,000-20,000 gallon tanks before the material was transferred from the Facility for treatment, storage, disposal, burning or incineration. Subject to and without

waiving their denials to previous allegations in the Complaint regarding the ownership and operation of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 21 of the Complaint.

22. Respondents stored, transported, disposed of, or otherwise handled K022, D001, D035, F003 and F005 in “tanks” as that term is defined under OAC 3745-50-10(A)(114) [40 C.F.R. § 260.10].

**ANSWER**

Respondents deny certain allegations in paragraph 22 of the Complaint. CIS admits that it stored products in “tanks” as that term is defined under OAC 3745-50-10(A)(114) [40 C.F.R. § 260.10]. Respondents deny each and every remaining allegation in paragraph 22 of the Complaint.

23. At all times relevant to this Complaint, Respondents’ K022, D001, D035, F003 and F005 was a “solid waste” as that term is defined under OAC 3745-50-10(A)(107) [40 C.F.R. § 261.2].

**ANSWER**

Respondents deny each and every allegation in paragraph 23 of the Complaint..

24. At all times relevant to this Complaint, Respondents’ K022, D001, D035, F003 and F005 was a “hazardous waste” as that term is defined under OAC 3745-50-10(A)(48) [40 C.F.R. § 261.3].

**ANSWER**

Respondents deny each and every allegation in paragraph 24 of the Complaint.

25. At all times relevant to this Complaint, Respondents’ holding of K022, D001, D035, F003 and F005 in tanks constituted hazardous waste “storage,” as that term is defined under OAC 3745-50-10(A)(111) [40 C.F.R. § 260.10].

**ANSWER**

Respondents deny each and every allegation in paragraph 25 of the Complaint.

26. Respondents managed hazardous waste at the Facility after November 19, 1980.



**ANSWER**

Respondents deny hazardous waste was managed at the Facility at any time, including after November 19, 1980.

27. On August 27, 2008, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

**ANSWER**

Respondents admit the U.S. EPA conducted a Compliance Evaluation Inspection of the Facility on August 27, 2008.

28. At all times relevant to this Complaint Respondents obtained used oils, K022, D001, D035, F003 and F005, and other materials which were unloaded into storage tanks for sequencing into the Respondents' day tank. The Respondents' day tank fed the blast furnace at RG Steel LLC. (formerly known as Severstal Warren, Inc., Warren Consolidated Industries, Inc., and as WCI Steel, Inc.), where energy was recovered from the materials sent by Respondents.

**ANSWER**

Respondents deny each and every allegation in paragraph 28 of the Complaint.

29. Respondents stored and treated hazardous waste (K022) at the Facility on or about November 21, 2005.

**ANSWER**

Respondents deny each and every allegation in paragraph 29 of the Complaint.

30. Respondents stored and treated hazardous waste designated (D001) on-or about 40 occasions between August 9, 2006 and February 27, 2009.

**ANSWER**

Respondents deny each and every allegation in paragraph 30 of the Complaint.

31. Respondents stored and treated hazardous waste (D001, D035, F003 and F005) on or about 149 occasions between November 16, 2006 and February 10, 2009.

**ANSWER**

Respondents deny each and every allegation in paragraph 31 of the Complaint.

32. On February 8, 2008, U.S. EPA issued a Notice of Violation to Respondent Carbon Injection Systems LLC, alleging certain violations of RCRA.

**ANSWER**

Respondents admit U.S. EPA issued a Notice of Violation to CIS dated February 8, 2008, related solely to U.S. EPA's claim that CIS stored and treated K022 waste in violation of RCRA, but denies any such violations. Respondents deny that U.S. EPA issued a notice of violation with respect to any other violation alleged in this Complaint.

33. On February 8, 2008, U.S. EPA issued a RCRA Information Request to Respondent Carbon Injection Systems LLC.

**ANSWER**

Respondents admit that U.S. EPA issued a RCRA Information Request to CIS dated February 8, 2008.

34. On March 27, 2008, Respondent Carbon Injection Systems LLC submitted a first response to the U.S. EPA RCRA Information Request.

**ANSWER**

Respondents admit that CIS submitted its first response to the U.S. EPA RCRA Information Request on March 27, 2008.

35. On April 28, 2008, Respondent Carbon Injection Systems LLC submitted a second response to the U.S. EPA RCRA Information Request.

**ANSWER**

Respondents admit that on April 28, 2008, CIS submitted a second response to the U.S. EPA RCRA Information Request.

36. On April 28, 2008, Respondent Carbon Injection Systems LLC, submitted to U.S. EPA a written response to the Notice of Violation.

**ANSWER**

Respondents admit that CIS submitted a written response to U.S. EPA for the Notice of Violation on April 28, 2008.

37. On April 28, 2010, U.S. EPA issued a second RCRA Information Request to Respondent Carbon Injection Systems LLC.

**ANSWER**

Respondents admit that on April 28, 2010, U.S. EPA issued a second RCRA Information Request to CIS.

38. On June 15, 2010, Respondent Carbon Injection Systems LLC, submitted a response to the U.S. EPA second RCRA Information Request.

**ANSWER**

Respondents admit that on June 15, 2010, CIS submitted a response to the U.S. EPA's second RCRA Information Request.

39. On August 31, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Respondent Carbon Injection Systems LLC.

**ANSWER**

Respondents admit that U.S. EPA issued a Notice of Intent to File Administrative Complaint to CIS on August 31, 2010.

40. On September 21, 2010, Respondent Carbon Injection Systems LLC submitted a response to the August 31, 2010, Notice of Intent to File Administrative Complaint, and asserted an inability to pay the penalty proposed in U.S. EPA's Notice of Intent to File Administrative Complaint. Although the inability to pay defense is an affirmative defense, U.S. EPA requested and received additional information regarding the ability to pay of Respondent Carbon Injection System LLC.

**ANSWER**

Respondents admit that CIS submitted a response to the U.S. EPA's August 31, 2010, Notice of Intent to File Administrative Complaint on September 21, 2010, and asserted an

inability to pay defense in the response. Respondents admit U.S. EPA requested and received additional information regarding the ability to pay of CIS.

41. Respondent Carbon Injection System LLC has the ability pay a portion of the proposed penalty.

**ANSWER**

Respondents deny CIS has the ability to pay a portion of the proposed penalty.

42. On October 26, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Respondent Scott Forster. Respondent Scott Forster has asserted an inability to pay the penalty proposed in U.S. EPA's Notice of Intent to File Administrative Complaint. Although the inability to pay defense is an affirmative defense, U.S. EPA has requested information regarding the alleged inability to pay of Respondent Scott Forster.

**ANSWER**

Respondents admit that on October 26, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Scott Forster. Respondents admit that Scott Forster has asserted an inability to pay the penalty proposed in the U.S. EPA's Intent to File Administrative Complaint. Respondents admit the U.S. EPA has requested additional information regarding Scott Forster's ability to pay.

43. U.S. EPA has received some but not all of the requested information. EPA has been unable to complete an ability to pay analysis for Respondent Scott Forster. Without further documentation, EPA has no basis to conclude that Respondent Scott Forster can meet his burden under the inability to pay affirmative defense.

**ANSWER**

Respondents admit Scott Forster has submitted some of the requested information regarding his ability to pay the proposed penalty; however, Respondents are without knowledge or information sufficient to form a belief as to whether the U.S. EPA has the basis to conclude that Scott Forster has the ability to pay, and, therefore, deny each and every remaining allegation in paragraph 43 of the Complaint.

44. On November 9, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Respondent Eric Lofquist. Respondent Eric Lofquist has asserted an inability to pay the penalty proposed in U.S. EPA's Notice of Intent to File Administrative Complaint. Although the inability to pay defense is an affirmative defense, U.S. EPA has requested information regarding the alleged inability to pay of Respondent Eric Lofquist.

**ANSWER**

Respondents admit that on November 9, 2011, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Eric Lofquist. Respondents admit Eric Lofquist asserted an inability to pay the penalty proposed in the U.S. EPA's Intent to File Administrative Complaint. Respondents admit the U.S. EPA has requested additional information regarding Eric Lofquist's ability to pay.

45. U.S. EPA has received some but not all of the requested information. EPA has been unable to complete an ability to pay analysis for Respondent Eric Lofquist. Without further documentation, EPA has no basis to conclude that Respondent Eric Lofquist can meet his burden under the inability to pay affirmative defense.

**ANSWER**

Respondents admit Eric Lofquist has submitted some of the requested information regarding his ability to pay the proposed penalty; however, Respondents are without knowledge or information sufficient to form a belief as to whether the U.S. EPA has the basis to conclude that Eric Lofquist has the ability to pay, and, therefore, deny each and every remaining allegation in paragraph 45 of the Complaint.

46. Based on the ability to pay information submitted to EPA as of the date of this complaint, all three Respondents have the combined ability to pay the proposed penalty.

**ANSWER**

Respondents deny that Respondents have the combined ability to pay the proposed penalty.

47. On February 8, 2011, U.S. EPA and all three Respondents met for a prefiling conference.

**ANSWER**

Respondents admit that on February 8, 2011, the U.S. EPA and all three Respondents met for a pre-filing conference.

48. At all times relevant to this Complaint, the State of Ohio had not issued a permit to Respondents to treat, store, or dispose of hazardous waste at their Facility.

**ANSWER**

Respondents admit that the State of Ohio has not issued a permit to Respondents to treat, store, or dispose of hazardous waste at the Facility, but deny any such permit was required.

**Count 1: Storage and Treatment of Hazardous Waste Without a Permit or Interim Status**

49. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 48 as though fully set forth herein.

50. Respondents did not apply for or obtain a permit during the time they owned or operated the Facility.

**ANSWER**

In responding to paragraph 50, Respondents assume Complainant's use of the term "permit" refers to a RCRA permit. Respondents admit they did not apply for or obtain a RCRA permit during the time they operated the Facility, but deny that any such permit was required.

51. Pursuant to OAC 3745-50-40(A)(1) [40 CFR § 270.10(f)(1)], no person shall begin physical construction of a new hazardous waste facility without having submitted "Part A" and "Part B" of a permit application to the director of the Ohio EPA and having received an effective Ohio hazardous waste facility installation and operation permit. Pursuant to 3005 (a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); Ohio Revised Code §§ 3734.02 and 3734.05 ("ORC"); and OAC § 3745-50-45; the owner and operator of a hazardous waste management unit is prohibited from operating a hazardous waste management unit except in accordance with a permit issued pursuant to RCRA.

**ANSWER**

Respondents state the provisions of OAC 3745-50-40(A)(1) [40 CFR § 270.10(f)(1)], 3005 (a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); Ohio Revised Code §§ 3734.02 and 3734.05 (“ORC”); and OAC 3745-50-45 speak for themselves.

52. Respondents built and operated a hazardous waste facility where storage and treatment of hazardous waste without a permit occurred, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at OAC 3745-50-40 to 3745-50-66; 3745-54 to 3745-57; 3745-205 and 3745-256 [40 C.F.R. Parts 264 , 40 C.F.R. , §§2.70.1.(c) and 270.10(a) and (d), and 270.13].

**ANSWER**

Respondents deny building and operating a hazardous waste facility where storage and treatment of hazardous waste without a permit occurred, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at OAC 3745-50-40 to 3745-50-66; 3745-54 to 3745-57; 3745-205 and 3745-256 [40 C.F.R. Parts 264 , 40 C.F.R. §§270.1.(c) and 270.10(a) and (d), and 270.13].

53. Respondents’ storage and treatment of hazardous waste without a permit violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of OAC §§ 3745- 50- 40 to 3745-50-66 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

**ANSWER**

Respondents deny storing and treating hazardous waste without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of OAC 3745-50-40 to 3745-50-66 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

**Count 2: Public Meeting**

54. Complainant incorporates paragraphs 1 through 48 [SIC] of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 53 as though fully set forth herein.

55. Pursuant to OAC § 3745-50-39(A)(2) [40 C.F.R. § 124.31(b)] prior to the submittal of a "Part B" permit application for a facility, the applicant must hold at least one meeting with the public in order, to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant must post a sign in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

**ANSWER**

Respondents state the provisions of OAC 3745-50-39(A)(2) [40 C.F.R. § 124.31(b)] speak for themselves.

56. Pursuant to OAC § 3745-50-40(A)(2)(a) [40 C.F.R. § 124.31(b)] prior to the submittal of a complete application for a hazardous waste facility installation and operation permit, the applicant must hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is geographically closer to the proposed location of the facility. The meeting must be open to the public and must be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities. The applicant must provide to the director evidence of the meeting and document community questions concerning the proposed activities.

**ANSWER**

Respondents state the provisions of OAC 3745-50-40(A)(2)(a) [40 C.F.R. § 124.31(b)] speak for themselves.

57. Respondents failed to hold-a public meeting in violation of OAC §§ 3745-50-39(A)(2), 3745-50-40(A)(2)(a) [40 C.F.R. § 124.31(b)].

**ANSWER**

Respondents deny violation of OAC 3745-50-39(A)(2), 3745-50-40(A)(2)(a) [40 C.F.R. § 124.31(b)].



### Count 3: Waste Analysis

58. Complainant incorporates paragraphs 1 through 57 of this Complaint as though set forth in this paragraph.

#### ANSWER

Respondents restate and incorporate their responses to paragraphs 1 through 57 as though fully set forth herein.

59. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents had a Used Oil Analysis Plan. The Used Oil Analysis Plan did not contain information regarding the treatment, storage or disposal of hazardous waste or procedures to determine the identity of each movement of waste managed at the facility.

#### ANSWER

Respondents deny certain allegations in paragraph 59 of the complaint. CIS admits that it had a Used Oil Analysis Plan while operating the facility from May 2005 to March 2010 but denies each and every remaining allegation contained in paragraph 59 of the Complaint. CIS's Used Oil Analysis Plan speaks for itself. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 59 of the Complaint.

60. Pursuant to OAC § 3745-54-13(B) [40 C.F.R. § 264.13(b)], the owner or operator must develop and follow a written waste analysis plan which describes the procedures to be implemented in order to comply with paragraph (A) of this rule. He must keep this plan at the facility. At a minimum, the plan must specify: (1) the parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters; (2) the test methods which will be used to test for these parameters; (3) the sampling method which will be used to obtain a representative sample of the waste to be analyzed; (4) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; (5) for off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and (6) The methods which will be used to meet the additional waste analysis requirements for specific waste management methods of OAC 3745-270-07.

#### ANSWER

Respondents state the provisions of OAC 3745-54-13(B) [40 C.F.R. § 264.13(b)] speak for themselves.

61. Pursuant to OAC § 3745-54-13(C) [40 C.F.R. § 264.13(c)] the waste analysis plan must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. The plan must describe the procedures which will be used to determine the identity of each movement of waste managed at the facility.

**ANSWER**

Respondents state the provisions of OAC 3745-54-13(C) [40 C.F.R. § 264.13(c)] speak for themselves.

62. Respondents did not develop and follow a sufficient written waste analysis plan from May 2005 to March 2010, in violation of OAC § 3745-54-13(B) and (C) [40 C.F.R. § 264.13(b) and (c)].

**ANSWER**

Respondents deny violation of OAC 3745-54-13(B) and (C) [40 C.F.R. § 264.13(b) and (c)], on grounds that include, but are not limited to, the fact that these regulations do not apply to the Facility.

**Count 4: Personnel Training**

63. Complainant incorporates paragraphs 1 through 62 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 62 as though fully set forth herein.

64. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents required some classroom instruction and/or on-the-job training by facility personnel regarding Respondents' Used Oil Analysis Plan (in February 2006) and Contingency Plan (in February and March 2006), but these plans did not include information regarding teaching facility personnel to perform their duties in a way that ensured the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities.

**ANSWER**

Respondents deny certain allegations in paragraph 64 of the Complaint. CIS admits that it provided classroom instruction and/or or on-the-job training to its facility personnel regarding its Used Oil Analysis Plan and Contingency Plan, but denies each and every remaining allegation in paragraph 64 of the Complaint. CIS' Used Oil Analysis Plan speaks for itself. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 64 of the Complaint.

65. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents maintained records related to classroom instruction and/or or on-the-job training by facility personnel regarding Respondents' Used Oil Analysis Plan (dated February 2006) and Contingency Plan (dated February and March 2006), but the records did not include information regarding teaching facility personnel to perform their duties in a way that ensured the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities.

**ANSWER**

Respondents deny certain allegations in paragraph 65 of the Complaint. CIS admits that it maintained records related to classroom instruction and/or or on-the-job training of facility personnel regarding Respondents' Used Oil Analysis Plan and Contingency Plan, but denies each and every remaining allegation in paragraph 65 of the Complaint. CIS' regards regarding training speak for themselves. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 65 of the Complaint.

66. Pursuant to OAC § 3745-54-16(A)(1) [40 CFR § 264.16(a)(1)] facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities. Pursuant to OAC 3745-54-16(D) [40 CFR § 264.16(d)], the owner or operator of the facility must maintain documents and records related to this training.

**ANSWER**

Respondents state the provisions of OAC 3745-54-16(A)(1) [40 C.F.R. § 264.16(a)(1)] and OAC 3745-54-16(D) [40 C.F.R. § 264.16(d)] speak for themselves.

67. From May 2005 to March 2010, Respondents' facility personnel failed to successfully complete a program of classroom instruction or on-the-job training that taught them to perform their duties in a way that ensured the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities, in violation of OAC § 3745-54-16(A)(1) [40 CFR § 264.16(a)(1)]. In addition, Respondents failed to maintain documents and records related to this training, in violation of OAC § 3745-54-16(D) [40 CFR § 264.16(d)].

**ANSWER**

Respondents deny violation of OAC 3745-54-16(A)(1) [40 C.F.R. § 264.16(a)(1)] and OAC 3745-54-16(D) [40 C.F.R. § 264.16(d)] as the regulations do not apply to the Facility.

**Count 5: Preparedness and Prevention**

68. Complainant incorporates paragraphs 1 through 67 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 67 as though fully set forth herein.

69. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not attempt to make: (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency; agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority; (3) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

**ANSWER**

Respondents deny each and every allegation in paragraph 69 of the Complaint..

70. Pursuant to OAC § 3745-54-37(A) [40 C.F.R. § 264.37(a)] Respondents were responsible to attempt to make: (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority; (3) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

**ANSWER**

Respondents deny the provisions of OAC 3745-54-37(A) [40 C.F.R. § 264.37(a)] apply to the Facility.

71. Respondents failed to attempt to make: (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority; (3) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility, in violation of OAC § 3745-54-37(A) [40 C.F.R. § 264.37(a)].

**ANSWER**

Respondents deny violation of OAC 3745-54-37(A) [40 C.F.R. § 264.37(a)], on grounds that include, but are not limited to the fact that this regulation does not apply to the operation of the Facility.

### **Count 6: Unmanifested Waste Report**

72. Complainant incorporates paragraphs 1 through 71 of this Complaint as though set forth in this paragraph.

#### **ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 71 as though fully set forth herein.

73. Respondents accepted hazardous waste (K022) at the Facility for storage on November 21, 2005, without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the waste.

#### **ANSWER**

CIS admits that a single shipment of a material labeled as a hazardous waste (K022) was accepted at the Facility on or around November 21, 2005, without an accompanying manifest, and that it did not prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the material, but CIS denies that it was required to do so and denies all remaining allegations in paragraph 73 of the Complaint. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 73 of the Complaint.

74. Respondents accepted hazardous waste (D001) at the Facility for storage on forty (40) occasions between August 9, 2006 and February 27, 2009, without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the waste.

#### **ANSWER**

CIS denies that it accepted hazardous waste (D001) at the Facility for storage on forty (40) occasions between August 9, 2006 and February 27, 2009. CIS admits that with respect to the specific forty (40) shipments that are the subject of the allegations in paragraph 74 of the

Complaint, it did not submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the shipments, but CIS denies that it was required to do so and denies all remaining allegations in paragraph 74 of the Complaint. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 74 of the Complaint.

75. Respondents accepted hazardous waste (D001, D035, F003 and F005) at the Facility for storage on one hundred forty nine (149) occasions between November 16, 2006 and February 10, 2009, without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the waste.

#### ANSWER

CIS denies that it accepted hazardous waste (D001, D035, F003 and F005) at the Facility for storage on one hundred forty nine (149) occasions between November 16, 2006 and February 10, 2009. CIS admits that with respect to the specific one hundred forty nine (149) shipments that are the subject of the allegations in paragraph 75 of the Complaint, it did not submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the shipments, but CIS denies that it was required to do so and denies all remaining allegations in paragraph 75 of the Complaint. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 75 of the Complaint.

76. OAC §3745-54-76 [40 CFR § 264.76] requires that if a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, then the owner or operator must prepare and submit an unmanifested waste report in the form of a letter to the director of the OEPA in the case of the federal regulations, the Regional Administrator of U.S. EPA) within fifteen days after receiving the waste.

**ANSWER**

Respondents state that the provisions of OAC 3745-54-76 [40 C.F.R. § 264.76] speak for themselves.

77. Respondents violated OAC § 3745-54-76 [40 CFR § 264.76] by accepting hazardous waste (K022) on November 21, 2005, hazardous waste (D001) at the Facility for treatment and storage on forty (40) occasions between August 9, 2006 and February 27, 2009, and hazardous waste (D001, D035, F003 and F005) on one hundred forty nine (149) occasions between November 16, 2006 and February 10, 2009 without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director of OEPA within fifteen days after receiving the waste.

**ANSWER**

Respondents deny each and every allegation in paragraph 77 of the Complaint.

**Count 7: Closure**

78. Complainant incorporates paragraphs 1 through 77 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 77 as though fully set forth herein.

79. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life.

**ANSWER**

Respondents deny certain allegations in paragraph 79 of the complaint. CIS admits the Facility did not have a written closure plan identifying the steps necessary to perform partial or final closure at the facility at any point during its active life, but denies the Facility was required to have a written closure plan. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 79 of the Complaint.



80. Pursuant to OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-120], the owner and operator of a hazardous waste management unit is required to have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life.

**ANSWER**

Respondents state the provisions of OAC 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-.120] speak for themselves.

81. When Respondents owned or operated the facility from May 2005 to March , 2010, Respondents failed to have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life, in violation of OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-120].

**ANSWER**

Respondents denying violation of OAC 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-.120].

**Count 8: Financial Assurance for Closure**

82. Complainant incorporates paragraphs 1 through 81 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 81 as though fully set forth herein.

83. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units.

**ANSWER**

Respondents deny certain allegations in paragraph 83 of the complaint. CIS admits that while operating the Facility from May 2005 to March 2010, the Facility did not have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units, but denies it was required to do so. Subject to and without waiving their

denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 83 of the Complaint.

84. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not establish financial assurance for closure of the facility in the form of a closure trust fund, surety bond, letter of credit, closure insurance, or financial test and corporate guarantee.

**ANSWER**

Respondents deny certain allegations in paragraph 84 of the complaint. CIS admits that while operating the Facility from May 2005 to March 2010, it did not establish financial assurance for closure of the facility in the form of a closure trust fund, surety bond, letter of credit, closure insurance, or financial test and corporate guarantee, but denies it was required to do so. Subject to and without waiving their denials to previous allegations in the Complaint regarding ownership and operations of the Facility, Scott Forster and Eric Lofquist deny each and every allegation in paragraph 84 of the Complaint.

85. Pursuant to OAC § 3745-55-40 [40 C.F.R. § 264.140], the owner and/or operator of a hazardous waste management facility is required to have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units in accordance with the applicable provisions of OAC § 3745-55-42 [40 C.F.R. § 264.142]. In addition, the owner and/or operator of a hazardous waste management unit is required to comply with the financial assurance provisions of OAC § 3745-55-43 [40 C.F.R. § 264.143].

**ANSWER**

Respondents state that the provisions of OAC 3745-55-40 [40 C.F.R. § 264.140], OAC 3745-55-42 [40 C.F.R. § 264.142], and OAC 3745-55-43 [40 C.F.R. § 264.143] speak for themselves.

86. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents failed to have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units, in violation of OAC 3745-55-42 [40 C.F.R. § 264.142], and Respondents failed to comply with applicable financial assurance requirements, in violation of OAC § 3745-55-43 [40 C.F.R. § 264.143].

**ANSWER**

Respondents deny violation of OAC 3745-55-42 [40 C.F.R. § 264.142] and OAC 3745-55-43 [40 C.F.R. § 264.143].

**Count 9: Tank System Requirements**

87. Complainant incorporates paragraphs 1 through 86 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 86 as though fully set forth herein.

88. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not meet hazardous waste tanks requirements of OAC § 3745-55-92 [40 C.F.R. § 264.192].

**ANSWER**

Respondents deny each and every allegation in paragraph 88 of the Complaint.

89. Pursuant to OAC § 3745-55-92 [40 C.F.R. § 264.192], the owner and/or operator of a hazardous waste management facility is required to obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer attesting that the tank system was adequately designed and that the tank system had sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it would not collapse, rupture, or fail. In addition, this assessment should have considered, at a minimum, the following information: (1) design standard(s) according to which tank(s) and/or the ancillary equipment were constructed; and (2) hazardous characteristics of the waste(s) that were to be handled; (3) existing corrosion protection measures; (4) documented age of the tank system; and (5) results of a leak test, internal inspection, or other tank integrity examination.

**ANSWER**

Respondents state the provisions of OAC 3745-55-92 [40 C.F.R. § 264.192] speak for themselves.

90. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents failed to obtain and keep on file at the facility a written hazardous waste tank assessment, in violation of OAC § 3745-55-92 [40 C.F.R. § 264.192].

**ANSWER**

Respondents deny violation of OAC 3745-55-92 [40 C.F.R. § 264.192].

**Count 10: Land Disposal Requirements**

91. Complainant incorporates paragraphs 1 through 90 of this Complaint as though set forth in this paragraph.

**ANSWER**

Respondents restate and incorporate their responses to paragraphs 1 through 90 as though fully set forth herein.

92. Pursuant to OAC § 3745-270-07(B)(5) [40 C.F.R. § 268.7(b)(5)] if a treatment facility's waste will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste off-site must comply with the notice and certification requirements applicable to generators.

**ANSWER**

Respondents state the provisions of OAC 3745-270-07(B)(5) [40 C.F.R. § 268.7(b)(5)] speak for themselves.

93. Pursuant to OAC § 3745-270-07(A)(1) [40 C.F.R. § 268.7(a)(1)] a generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards of OAC §§ 3745-270-40, 3745-270-45, or 3745-270-49 [40 C.F.R. §§ 268.45, 268.45 or 268.49].

**ANSWER**

Respondents state the provisions of OAC 3745-270-07(A)(1) [40 C.F.R. § 268.7(a)(1)], OAC 3745-270-40, 3745-270-45, and 3745-270-49 [40 C.F.R. §§ 268.45, 268.45 or 268.49] speak for themselves.

94. Pursuant to OAC § 3745-270-07(A)(2-4) [40 C.F.R. § 268.7(a)(2-4)] with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the generator's files.

**ANSWER**

Respondents state the provisions of OAC 3745-270-07(A)(2)-(4) [ 40 C.F.R. § 268.7(a)(2)-(4)] speak for themselves.

95. Respondents failed to determine and provide land disposal notification and certification pursuant to the land disposal requirements of OAC § 3745-270-07 [40 C.F.R. § 268.7].

**ANSWER**

Respondents deny each and every allegation contained in paragraph 95 of the Complaint and further deny the requirements of OAC § 3745-270-07 [40 C.F.R. § 268.7] apply and that CIS was required to provide any such notification or certification.

96. The acts or omissions referred to in the preceding paragraphs constitute violations of RCRA and/or of the federally approved hazardous waste management program for the State of Ohio.

**ANSWER**

Respondents deny each and every allegation in paragraph 96 of the Complaint and specifically deny violating RCRA and/or of the federally approved hazardous waste management program for the State of Ohio as alleged in paragraph 96 of the Complaint.

**Civil Penalty**

97. Complainant proposes that the Administrator assess a civil penalty of \$1,791,810 against Respondents for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheets."

**ANSWER**

Respondents admit Complainant proposes that the Administrator assess a civil penalty of \$1,791,810 against Respondents for the violations alleged in this Complaint, but denies that such penalty should be assessed against Respondents.

98. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S., EPA must

consider the seriousness of the violation and any good faith efforts to comply with applicable requirements. *See* Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

### **ANSWER**

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 of the Complaint, and, therefore, deny each and every allegation in paragraph 98 of the Complaint.

### **Compliance Order**

99. Based on the foregoing, Respondents are hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a) [40 C.F.R. § 22.37(b)] to comply with the following requirements immediately upon the effective date of this Order:

- a. Respondents shall comply with all applicable closure and post-closure requirements in OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110- 120] to the extent practicable given the current owner and operator of the Facility.
- b. If all applicable closure and post-closure requirements in OAC §§ 3745-55- 10 through 3745-55-20 [40 C.F.R. §§ 264.110-120] are complied with by Respondents, as directed in paragraph 94.a, above, Respondents shall comply with all applicable financial assurance requirements for closure in OAC 3745-55- 42 [40 C.F.R. § 264142], and OAC § 3745-55-43 [40 C.F.R. § 264.143].

### **ANSWER**

In response to paragraph 99 of the Complaint, Respondents deny that the closure and post-closure requirements referenced therein are applicable to the Facility. In further answer to paragraph 99 of the Complaint, Respondents state that any such compliance order would be unreasonable and unlawful.

100. Respondents shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 96 of this Order.

**ANSWER**

In response to paragraph 100 of the Complaint, Respondents state that any such compliance order would be unreasonable and unlawful.

101. Respondents shall achieve and maintain compliance with all required prohibitions governing the storage, treatment and disposal of hazardous waste applicable to treatment, storage or disposal facilities, codified at or incorporated by OAC § 3745-54-01 to 101, OAC § 3745-55-10 to 99, OAC § 3745-56-20 to 56-83, OAC § 3745-57-02 to 93 and OAC § 3745-205-100 to 202 [40 C.F.R. Parts 264 and 265] by the effective date of this Order.

**ANSWER**

In response to paragraph 101 of the Complaint, Respondents state that any such compliance order would be unreasonable and unlawful.

102. Respondents shall notify U.S. EPA in writing within 15 days of the effective date of this Order either certifying compliance with the Order or explaining why they are not in compliance and proposing a date to achieve compliance.

**ANSWER**

In response to paragraph 102 of the Complaint, Respondents state that any such compliance order would be unreasonable and unlawful.

103. Respondents shall submit all reports, submissions, and notifications required by this Order to the United States Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Michael Beedle (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

**ANSWER**

In response to paragraph 103 of the Complaint, Respondents state that any such compliance order would be unreasonable and unlawful.

**Affirmative Defenses**

1. Complainant has failed to join a party or parties necessary for the just and equitable adjudication of U.S. EPA's claims in this administrative proceeding.
2. The Complainant's claims are barred on grounds that they were brought for improper motive, arise out of malice or ill will, and amount to an abuse of U.S. EPA's enforcement discretion.

3. The Complainant's claims are estopped because they are arbitrary and capricious and inconsistent with other actions and inactions of U.S. EPA that involve the same products that are the subject of this administrative proceeding.
4. Complainant's claims are barred by the doctrine of selective enforcement.
5. Complainant's demand for the assessment of a civil penalty against CIS should be denied on grounds that CIS is not able to pay the penalty claimed.
6. To the extent that Complainant's allegations are proven true (which Respondents deny), Respondents were without sufficient knowledge or ability to properly characterize the material in question and/or were otherwise misled with respect to the nature of the material.
7. Complainant's claims regarding the single test shipment of K022 waste from JLM Chemicals are barred by the fair notice doctrine.

#### **Reservation of Rights**

Respondents may have additional defenses that cannot be articulated due to the fact that Respondents do not have copies of critical documents, and/or due to Complainant's failure to provide more specific information regarding the nature of its claims. Respondents therefore reserve the right to assert additional defenses upon discovery of further information concerning Complainant's claims.

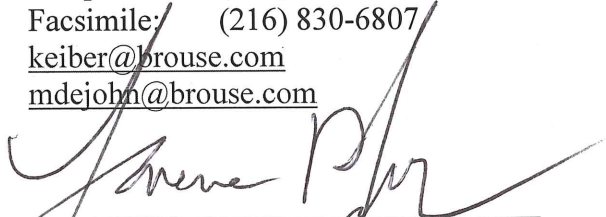
#### **Request for a Hearing**

Respondents hereby request a hearing on this matter.



Respectfully submitted,

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PROTECTION AGENCY

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

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

**CERTIFICATE OF SERVICE**

I, Lawrence W. Falbe, an attorney, hereby certify that the foregoing Respondents' Answer and Request for a Hearing was sent on April 20, 2012, in the manner indicated, to the following:

Original and One Copy by hand delivery to:

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



Copy by Overnight Delivery to:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14th Street, N.W., Suite 350  
Washington, DC 20005

Steven Sarno (sarno.steven@epamail.epa.gov)  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14th Street, N.W., Suite 350  
Washington, DC 20005

Copy by hand delivery to:

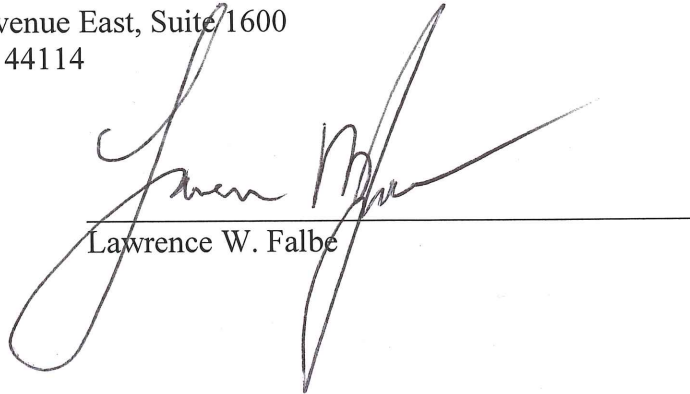
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April 20, 2012



Lawrence W. Falbe

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