

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Docket No. RCRA-05-2011-0009**

**Carbon Injection Systems, LLC,  
Scott Forster,  
Eric Lofquist,  
  
Respondents.**

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**COMPLAINANT’S MOTION FOR LEAVE TO AMEND COMPLAINT**

Comes now Complainant, the United States Environmental Protection Agency, Region 5 (Complainant or the Region), by and through its counsel, pursuant to Rules 22.14(c)(a) and 22.16 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules or Rules), hereby moves for leave to amend its Complaint to: reduce the proposed penalty from \$1,915,148 to \$1,795,596 by adjusting the economic benefit component of the proposed penalty; correctly identify the sequence of events at the Carbon Injection System LLC (CIS) facility after CIS ceased operations; correctly identify CIS as a Limited Liability Company, and; correct a typographical error. 40 C.F.R. §§ 22.14(c) and 22.16. Respondent does not oppose this motion. In support of this Motion, Complainant states as follows:

1. This is a civil administrative action brought under the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. §§ 6901-6992k. This action alleges that Respondents Carbon Injection Systems LLC, Scott Forester, and Eric Lofquist violated various provisions of RCRA.

2. On May 13, 2011, Complainant initiated this action by filing a Complaint against Respondents. In its Complaint, Complainant alleged ten counts for various violations of RCRA: (1) Storage and Treatment of Hazardous Waste Without a Permit or Interim Status; (2) Public Meeting; (3) Waste Analysis; (4) Personnel Training; (5) Preparedness and Prevention; (6) Unmanifested Waste Report; (7) Closure; (8) Financial Assurance for Closure; (9) Tank System Requirements, and; (10) Land Disposal Requirements. Complainant proposed a civil penalty of \$1,915,148 under Section 3008 of RCRA, 42 U.S.C. § 6928, for Respondents' alleged violations.

3. Based on Respondents' Answer to the Complaint as well as Respondents' Joint Initial Prehearing Exchange and a recently revised "Beyond BEN" figure calculated by EPA expert Gail Coad, the Complainant seeks leave to amend its Complaint as follows:

a. Replace paragraph 5 of the Complaint with:

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.

b. Replace paragraph 11 with:

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 associated with Respondents Scott Forster and Eric Lofquist, now operates the Facility.

c. Replace the penalty amount in paragraph 97 with: \$1,795,596.

d. Replace the "Economic Benefit" amount for Count 1 in Attachment A with \$343,698.

e. Replace the total penalty amount for Count 1 in Attachment A with \$1,239,873.

f. Replace the "Economic Benefit" amount for Count 8 in Attachment A with \$50,618.

g. Replace the total penalty amount for Count 8 in Attachment A with \$439,958.

h. Replace the "Grand Total All Penalties" amount on page 4 of Attachment A with \$1,795,596.

4. The Consolidated Rules provide that a Complaint may be amended after the Answer has been filed upon motion granted by the Presiding Officer. 40 C.F.R. §22.14(c). “While no standard is provided in the Rules for determining whether to grant an amendment, the general rule is that administrative pleadings are ‘liberally construed and easily amended . . . .’” *In re Port of Oakland and Great Lakes Dredge and Dock Co.*, MPRSA Appeal No. 91-1, 1992 EPA App. LEXIS 73 at \*72 (August 5, 1992) (citing *Yaffe Iron & Metal Co., Inc. v. EPA*, 774 F.2d 1008, 1012 (10<sup>th</sup> Cir. 1985)). See also *In the Matter of Liphatech, Inc.*, Docket No. FIFRA-05-2010-0016, 2010 EPA ALJ LEXIS 27 at \*8 (December 29, 2010); *In the Matter of Bug Bam Product, LLC*, Docket No. FIFRA-09-2009-0013, 2010 EPA ALJ LEXIS 2, at \*6 (January 7, 2010); and *In re Scranton Prods., Inc., et al.*, Docket No. CAA-03-2008-004, 2008 EPA ALJ LEXIS 16 at \*2 (April 3, 2006). Absent a showing that the proposed amendment is brought in bad faith or for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile, leave to amend should be granted. *Scranton Prods.*, 2008 EPA ALJ LEXIS 16 at \*2-3 (citing *Foman v. Davis*, 371 U.S. 178, 181-82 (1962)); *In the Matter of San Pedro Forklift*, Docket No. CWA-09-2009-0006, 2010 EPA ALJ LEXIS 17 at \*5 (August 11, 2010); *In the Matter of FRM Chemical, Inc. et al.*, Docket Nos. FIFRA-07-2008-0035, et seq., 2010 EPA ALJ LEXIS 12 at \*7 (May 27, 2010); and *Bug Bam Product*, 2010 EPA ALJ LEXIS 2, at \*6.

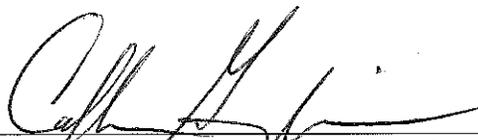
5. Because Complainant seeks to reduce the proposed penalty in this action and make other small changes to the Complaint, there is not prejudice to Respondent. See *Scranton Prods.*, 2008 EPA ALJ LEXIS 16, at \*3. Furthermore, Complainant’s request for leave to amend the Complaint to reduce the proposed penalty is not the product of undue delay, bad faith, or dilatory motive.

6. For all of the foregoing reasons, Complainant respectfully requests that the Presiding Officer grant it leave to amend its Complaint to reduce the proposed penalty in this action and make other minor changes to the Complaint, or, in the alternative, order that the changes be made without the need for the filing of an amended Complaint.

Respectfully Submitted,

Counsel for EPA:

3/15/12  
Date



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**CERTIFICATE OF SERVICE**

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

I certify that the foregoing "Complainant's Motion for Leave to Amend Complaint", dated March 15, 2012, was sent this day in the following manner to the addressees listed below:

Original and one copy hand-delivered to:

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

Copy via overnight mail to:

Attorneys for Respondents:

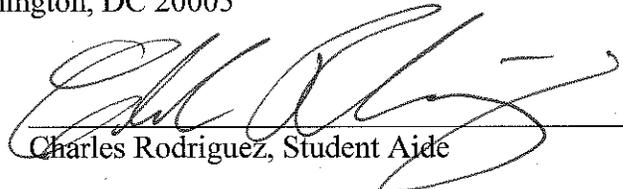
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
c/o Keven D. Eiber  
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Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
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Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
U.S. EPA Office of the Hearing Clerk  
1099 14th St. NW  
Suite 350, Franklin Court  
Washington, DC 20005

3-15-12  
Date

  
Charles Rodriguez, Student Aide

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