



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

November 18, 2011

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

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

Dear Chief Judge Biro:

Please find enclosed a copy of Complainant's Rebuttal Prehearing Exchange, filed on November 18, 2011, in the above-captioned matter. Please note that, consistent with Complainant's Initial Prehearing Exchange, the exhibits being filed with Complainant's Rebuttal Prehearing Exchange are in CD-ROM format.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Catherine Garypie", written over a horizontal line.

Catherine Garypie  
Associate Regional Counsel

Enclosures

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** ) **Docket No. RCRA-05-2011-0009**  
)  
**Carbon Injection Systems, LLC,** )  
**Scott Forster,** )  
**Eric Lofquist,** )  
)  
**Respondents.** )

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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**COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE**

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

Based upon a review of the Respondents’ Joint Initial Prehearing Exchange, EPA hereby amends the description of the testimony of one fact witness (Michael Beedle) and one expert witness (Gail Coad). EPA also hereby submits additional exhibits and additional prehearing exchange information.

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

Complainant hereby amends the description of the testimony of Michael Beedle as follows:

**Michael Beedle**

Mr. Michael Beedle is an Environmental Scientist with the Resource Compliance Section #2 of the RCRA Branch in the Land and Chemicals Division, U.S. EPA, Region 5. Mr. Beedle

has detailed and extensive experience with the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k (hereafter referred to as RCRA), and regulations promulgated thereunder. Mr. Beedle is expected to testify about the events and evidence related to his August 27, 2008, inspection of the Carbon Injection Systems LLC (CIS) facility located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio, his August 26-27, 2008, inspection of WCI Steel, Inc. (a/k/a Severstal Warren and RG Steel), 1040 Pine Avenue SE, Warren, Ohio, and his review of various documents related to the facilities. Mr. Beedle is also expected to present testimony regarding the calculation of the proposed penalty in this case, the consistency of the penalty with the applicable EPA policy, and the appropriateness of the penalty in this case, including the appropriate inputs for the BEN computer model to calculate the economic benefit for the penalty in this matter. If necessary, Mr. Beedle may also provide testimony sufficient to authenticate documents submitted for evidence at hearing.

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

Complainant hereby amends the description of the testimony of Gail Coad as follows:

**Gail Coad**

Gail Coad is a Principal at Industrial Economics Incorporated (Cambridge, Massachusetts). Ms. Coad has extensive experience in analyzing the financial condition of individuals and businesses in the context of regulatory or enforcement actions. Ms. Coad is expected to testify regarding the ability of CIS, Scott Forster and Eric Lofquist to pay the proposed penalty. Ms. Coad will explain the methods used to analyze each Respondent's financial information, as well as the results of her analysis. Ms. Coad will also testify regarding the BEN computer program which was used by EPA to calculate the economic benefit for the

penalty in this matter, and the appropriate “Beyond BEN” calculation in this matter. Ms. Coad’s resume is attached as CX92.

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

Complainant intends to introduce the following additional documents into evidence at hearing. Copies of these additional documents are attached to this prehearing exchange.

- CX116- Ohio Regulations Authorized by U.S. EPA (3745-50)
- CX117- Ohio Regulations Authorized by U.S. EPA (3745-54)
- CX118- Ohio Regulations Authorized by U.S. EPA (3745-55)
- CX119- Ohio Regulations Authorized by U.S. EPA (3745-56)
- CX120- Ohio Regulations Authorized by U.S. EPA (3745-57)
- CX121- Ohio Regulations Authorized by U.S. EPA (3745-205)
- CX122- Ohio Regulations Authorized by U.S. EPA (3745-256)
- CX123- Ohio Regulations Authorized by U.S. EPA (3745-270)
- CX124-May 2, 1980, Background Document for D001 hazardous waste listing
- CX125-October 30, 1980, Background Document for D0035 hazardous waste listing
- CX126-November 4, 1980 Background Document for F001, F002, F003, F004 and F005 hazardous waste listings
- CX127-Definition of Solid Waste Compendium, Introduction and General Index
- CX128- Definition of Solid Waste Compendium, Volume E: Burning for Energy Recovery Index
- CX129- Definition of Solid Waste Compendium, Volume J: By-Products Index
- CX130- Definition of Solid Waste Compendium, Volume K: Commercial Chemical Products Index
- CX131- RCRA Online, Introduction
- CX132- RCRA Online, General Index
- CX133- RCRA Online, Burning Index
- CX134- RCRA Online, Combustion of Hazardous Waste Index
- CX135- RCRA Online, Hazardous Waste Index
- CX136- RCRA Online, Hazardous Waste Recycling Index
- CX137- RCRA Online, Incineration Index
- CX138- RCRA Online, Permits and Permitting Index
- CX139- RCRA Online, Treatment Index
- CX140- RCRA Online, TSDFs Index
- CX141- Background Document for K022 hazardous waste listing
- CX142-11/94 EPA Guidance “Regulation of Fuel Blending and Related Treatment and Storage Activities Memo”
- CX143- IFF information sheet for “ISO E Super”

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<sup>1</sup> Complainant notes that “Confidential Information” and “Confidential Documents” will be treated in accordance with the Order on Joint Motion for Entry of Stipulation and Protective Order Regarding Confidentiality, issued October 26, 2011.

CX144-IFF MSDS for "ISO E Super"  
CX145-1/26/11 C. Garypie (EPA) to M. DeJohn (Brouse McDowell)  
CX146-1990 Article "Penalty Assessment at the Environmental Protection Agency: A View From Inside"  
CX147-11/98 Article "Making the Polluter Pay: EPA's Experience in Recapturing a Violator's Economic Benefit from Noncompliance"  
CX148-1/2/04 Article "Wrongful Profits: Setting the Record, and the Concept, Straight"  
CX149-Fall 2004 Article "EPA's Economic Benefit Analysis Policy and Practice"  
CX150-5/25/03 EPA White Paper "Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs"  
CX151-9/7/05 Letter from M. Morgan and A. Freeman (SAB) to S. Johnson (EPA) re: An Advisory of the Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel of the EPA Science Advisory Board  
CX152-7/19/06 Letter from S. Johnson (EPA) to M. Morgan (SAB) re: Illegal Competitive Advantage  
CX153-12/97 Update EPA guidance "Estimating Costs for the Economic Benefits of RCRA Noncompliance"  
CX154-8/09 Closure Cost Estimating Tool User Guide  
CX155-5/1/05 Closure Cost Estimating Tool  
CX156-4/10 OEPA Guide to Environmental Permitting in Ohio  
CX157-Real estate information for 3421 Legacy Pointe Parkway  
CX158-Acros Organics MSDS for 3-methyl-3-penten-2-one  
CX159-information for 3-methyl-3-penten-2-one

Complainant respectfully reserves the right to elect to not introduce any of the foregoing exhibits at the hearing and/or, in accordance with Rule 22.22(f) of the Rules of Practice, 40 C.F.R. § 22.19(f), to supplement its prehearing exchange with additional exhibits not listed above and will provide reasonable notice to the Presiding Officer and Respondents concerning any modifications to the above exhibit list.

Complainant incorporates by reference, as if fully set forth herein, the list of Respondents' exhibits set forth in their Initial Joint Prehearing Exchange. Complainant may present any or all exhibits as part of its case. Respondents' exhibits have been produced by Respondents and therefore are not being separately produced by Complainant.

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

Complainant is providing no additional information in this Rebuttal Prehearing Exchange.

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

Complainant is providing no additional information in this Rebuttal Prehearing Exchange.

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

To the extent documents support the factual allegations denied or otherwise not admitted in Respondents' Answer, those documents are included among the exhibits identified in Complainant's Initial Prehearing Exchange, Respondents' Initial Joint Prehearing Exchange, and Complainant's Rebuttal Prehearing Exchange. The specific exhibits that support those factual allegations are too numerous to list because, as noted in Respondents' Initial Joint Prehearing Exchange, Respondents have several general denials to the Complaint. Accordingly, most of the exhibits, taken together, support the factual allegations in the Complaint.

EPA notes that Respondents complain of EPA's "practice of designating thousands of pages of documents as a single exhibit", and hereby responds that while it is true certain exhibits contain a large amount of pages, each exhibit is in fact one document and each must be submitted in their entirety for authentication purposes and to allow the Court to view the full context of each page.

EPA also notes that certain errors in the Complaint have been identified and EPA is preparing to motion the Court to amend the Complaint to make the necessary corrections. For example, as relates to paragraph 11 of the Complaint: (1) Respondent Carbon Injection Systems LLC is not a corporation but rather a limited liability company, and (2) the facility was not

rather 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 – as part of the takeover of operations at the facility by Main Street Commodities LLC, a separate limited liability company co-owned by Respondents Scott Forster and Eric Lofquist.

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

It should be noted that Respondents provided new financial information in their Initial Prehearing Exchange which may affect Complainant’s calculation of the “beyond BEN” and “ability to pay” component of the penalty sought. Complainant’s witnesses are currently in the process of evaluating the new information provided. Complainant respectfully reserves the right to, in accordance with Rule 22.22(f) of the Rules of Practice, 40 C.F.R. § 22.19(f), supplement its prehearing exchange with additional exhibits not listed above and will provide reasonable notice to the Presiding Officer and Respondent concerning any modifications to the above exhibit list.

**VII. Reservation of Rights**

Complainant is providing no additional information in this Rebuttal Prehearing Exchange.

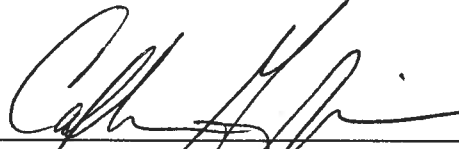
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Respectfully Submitted,

Counsel for EPA:

11/18/11

Date



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**CERTIFICATE OF SERVICE**

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**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 Rebuttal Prehearing Exchange", dated November 18, 2011, was sent this day in the following manner to the addressees listed below:

Original and one copy hand-delivered to:

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

Copy via Regular Mail to:

Attorneys for Respondents:

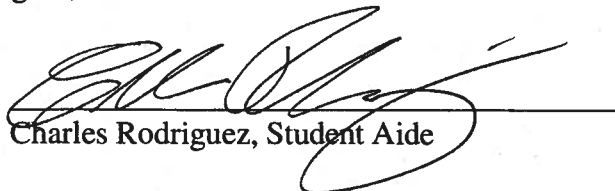
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
c/o Lawrence W. Falbe  
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Chicago, IL 60654

Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
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Presiding Judge:

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

11-18-11  
Date

  
Charles Rodriguez, Student Aide