UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

ORDER ON MOTION FOR THIRD PARTY DISCOVERY AND ORDER POSTPONING HEARING AND REVISING CASE SCHEDULE

As you were previously notified, this proceeding arises under the authority of Section 3008(a) of the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 *et seq.* ("Rules of Practice"). On July 27, 2011, prior to the prehearing exchange, Respondents filed a Motion for Administrative Subpoena to Issue for the Deposition of International Flavors & Fragrances, LLC. By Order issued August 5, 2011, the undersigned deferred ruling upon that motion until after the conclusion of the prehearing exchange, in accordance with 40 C.F.R. § 22.19(e).

On December 8, 2011, following the completion of the prehearing exchange process, Respondents submitted a Motion for a Revised Schedule and Renewed Motion for Third-Party Discovery ("Motion" or "Mot.") in which the Respondents request a 90-day stay of proceedings, leave to conduct certain "other discovery" pursuant to 40 C.F.R. § 22.19(e), bifurcation of the hearing, postponement of the hearing, and an expedited ruling on the Motion. The Motion also seeks leave to depose several non-party witnesses and includes a Joint Motion for Administrative Subpoenas to Issue for the Discovery Depositions of Third-Party Witnesses ("Subpoena Request") along with four draft Subpoenas *Duces Tecum*. The subpoenas identify four individuals associated with International Flavors & Fragrances, Inc. ("IFF") who are also listed as proposed witnesses in Respondent's Initial Prehearing Exchange.[1]

[1] The individuals identified in the subpoenas are: Theresa Barry, Donald DuRivage, Thomas Guido and David Shepard. Both Ms. Barry and Mr. DuRivage are also listed as witnesses for Complainant in its Initial Prehearing Exchange. IFF is not presently a party in this

Pursuant to an Order directing the parties to complete briefing on an accelerated timeline, on December 13, 2011, Complainant filed its Response to Respondents' Motion for a Revised Case Schedule and Renewed Motion for Third-Party Discovery ("Response" or "Resp."). On December 16, 2011, the undersigned received Respondents' Reply to Complainant's Response to Motion for a Revised Case Schedule and Renewed Motion for Third-Party Discovery ("Reply").

I. Depositions

The standards for authorizing additional discovery after completion of the pre-hearing exchange are set forth at 40 C.F.R. § 22.19(e). In support of their Motion, Respondents assert that third-party discovery is needed to obtain important, probative information relevant to each count in the Complaint from entities not named as parties in the case. According to Respondents, the central, jurisdictional issue in this case is whether the substances that Respondent CIS allegedly purchased from IFF, Unitene LE and Unitene AGR, are properly classified as "hazardous waste" under the relevant RCRA regulations or, as Respondents assert, as co-products not subject to RCRA. Mot. at 1-4; *see* Compl. ¶¶ 23-24; Ans. ¶¶ 23-24. Respondents posit that this legal determination is bound up in the factual understanding of IFF's manufacturing processes. Mot. at 4-6.[2] Respondents argue that because this information is only available from IFF, and because IFF has not provided all this information voluntarily, additional discovery in the form of depositions is necessary to enable Respondents to defend themselves against the allegations in the Complaint. Mot. at 4-6.

Respondents argue that the additional time sought to complete their requested discovery is reasonable, citing the intervening holiday season, the lack of urgency of the matter (given the past, completed nature of the alleged violation), and that Complainant seeks a significant penalty against Respondents. Mot. at 6. Respondents also argue that while the proposed depositions

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case, though the record indicates that Complainant has issued to IFF a separate Notice of Violation directly related to the matters at issue in this case. *See* Mot. at 3.

[2] Complainant appears to argue that the information Respondents seek pertains to "a disputed legal issue, 'whether the products purchased from IFF were hazardous wastes' and not a disputed issue of material fact. . . [thus it] is not a proper subject of discovery under Part 22." Resp. at 10. In its Reply, Respondents dispute Complainant's characterization of the information sought arguing that whether a material is a co-product or a waste is an intensely factual inquiry, noting that EPA's own statements acknowledge that this determination involves consideration of many factors. Reply at 2 (citing Respondent's Exhibit 36 "July 9, 1992 U.S. EPA Letter to John Chambers"). Whether the materials at issue are rightly classified as hazardous wastes as defined by RCRA is not generally a relevant inquiry to put to fact witnesses. However, regardless of this ultimate issue underpinning liability, Respondents have established that the information IFF controls related to product and waste processing, composition of products and waste streams, manufacturing technical specifications, etc., *see* Mot. at 4-5, is the type of factual information properly sought in discovery under Part 22.

would take place in New York, NY, and Augusta, GA, Complainant would not bear an undue burden because it can participate by telephone or video conference. *Id.*

In its Response, Complainant notes that additional discovery is discouraged in administrative proceedings, as a matter of policy, and argues that Respondents have not met their burden of justifying any additional discovery. Resp. at 7-8 (citing 40 C.F.R. § 22.19(e)). Complainant argues that the information sought in the depositions would not be most reasonably obtained from the non-moving party, because much of this information has already been shared with Respondents by Complainant or the third party before the Complaint was filed and in the prehearing exchange documents. Resp. at 8-9. Complainant further argues that information regarding topics not covered by EPA's earlier information requests to IFF can be obtained from other sources, such as the Patent and Trademark Office, the Georgia Environmental Protection Division, or EPA Region 4. Resp. at 9.

Complainant also asserts that it would be burdened by the proposed depositions, in part because they are scheduled in two different cities over the course of four days, and travel funds may not be available to EPA staff at that time.[3] Complainant also argues that participating in depositions by telephone or observing them by video conference are insufficient substitutes because the subtleties of live observation (such as eye contact, gestures, and demeanor) are lost in such media. *Id.* Respondents appropriately note, however, that the decision to initiate this action rests with Complainant and Complainant cannot now complain of an inability to afford the attendant costs of litigation. Reply at 4.

In addition, Complainant asserts that Respondents have failed to establish *both* prongs of Rule 22.19(e)(3) to justify depositions (*i.e.*, that the information sought cannot reasonably be obtained by alternative discovery methods, and that there is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for hearing). 40 C.F.R. § 22.19(e)(3)(1)-(2). *See* Resp. at 10-11.

The undersigned finds that, with respect to the standards articulated in 40 C.F.R. § 22.19(e)(1), Respondents have adequately established that the information sought has significant probative value and is most reasonably obtained from IFF, and that IFF has declined to provide

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[3] The Response was filed while the EPA was operating under a Continuing Resolution ("CR") that expired on December 16, 2011. As of December 19th, Congress had extended the CR through December 23rd and is expected to pass a budget that will fund EPA through the end of the fiscal year (September 30, 2012), albeit at reduced levels. While it is true that the absence of an operating budget precludes the Agency - and even this office - from committing funds beyond the end of the CR, we nevertheless continue to plan with the expectation that a budget with be timely passed. In any event, there mere possibility that Complainant will lack an operating budget by the time of the depositions is not a basis for denying Respondents' well supported request. Should the EPA in fact shutdown due to an appropriations lapse, appropriate steps will be taken to adjust deadlines and assess the parties' concerns.

that information voluntarily. Mot. at 5-6. Respondents have also demonstrated that some delay in this proceeding is justified by the need to gather information relevant to this key factual question in advance of hearing. Respondents' apparent intent in seeking leave to conduct depositions of IFF employees is to sort through the confusion evident in the prehearing exchange and allow Respondents the opportunity to prepare their core case. There is no evidence in the record to suggest that depositions of the IFF employees is merely a fishing expedition.

On the issue of undue burden to the non-moving party, Complainant appears to construe the language in Rule 22.19 as applying to an opposing party's need to defend depositions of non-party witnesses. Where the non-moving party is not the subject of the depositions, however, it is more difficult to claim an undue burden. The burden that the deposition of IFF employees places on Complainant is minimal. The deponents are not associated with Complainant and Complainant attendance at the deposition is voluntary. If it chooses to attend, however, it will incur the same cost of participation as any other party would.[4]

With respect to the additional showing necessary under Rule 22.19(e)(3), it should be noted that the burden to justify depositions does not, as Complainant suggests, require the moving party to establish *both* that the information cannot reasonably be obtained by alternative methods of discovery and that there is substantial reason to believe the evidence may not be preserved for hearing. *See* Resp. at 10-11. The Rule is phrased in the disjunctive and the Presiding Officer need only make one finding, under either paragraph (i) or (ii), in order to permit a deposition. 40 C.F.R. § 22.19(e)(3)(i)-(ii). Here, it is clear that at least some of the information Respondents seek from IFF cannot reasonably be obtained by an alternative method of discovery. Respondents' primary reason for requesting additional discovery is to address a self-identified, technical knowledge gap before hearing. Part of this knowledge gap appears to be due to the proprietary nature of the technical information sought. Because Respondents essentially do not know what to ask, written interrogatories are rendered suboptimal.[5] Moreover, the standing protective order in this case and the volume of Confidential Business Information claims militate against Complainant's assertion that information from various parties has been freely and fully exchanged. *See* Joint Motion for Entry of Stipulation and Protective Order

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[4] In this instance, if Complainant continues to lack sufficient travel funds under the FY12 budget, it might look to its regional counsel counterparts in both Atlanta, GA, and New York, NY, who could more easily attend the depositions for observational purposes, thereby obviating the need for Complainant's counsel to travel to either location.

[5] As Complainant notes, Response at 3 n.1, the subpoenas attached to the Motion are each titled "Subpoena Duces Tecum" and require the production of certain documents in addition to testimony. Although these documents might more efficiently be obtained via a single request for production of documents submitted to IFF corporate, the nature of the requested documents appears to be directly related to the anticipated testimony of each of the identified IFF employees and will likely make the depositions more useful, to all parties in attendance, if they are contemporaneously produced by the deponents.

Regarding Confidentiality (filed October 14, 2011) at ¶ 2.

Accordingly, Respondents' Motion with respect to the deposition of the four identified IFF employees, as well as the Subpoena Request, are **GRANTED**. The undersigned will issue the Subpoenas to Respondents' counsel for service in accordance with Rule 22.5(B)(1). 40 C.F.R. § 22.19(e)(4). Respondents are hereby instructed to make any documents produced by the deponents available to Complainant for review and reproduction, regardless of whether Complainant or its representative attends the depositions.

II. Additional Third-Party Discovery

In addition to the discovery Respondents seek from IFF, Respondents also request permission to depose additional non-party witnesses, "if necessary." Mot. at 7 (footnote 4 lists these proposed witnesses). Respondents note that the nature of the expected testimony "appears to be in dispute" and asserts that some or all of these other witnesses many not need to incur the expense of attending the hearing, if prehearing depositions can demonstrate that they lack knowledge relevant to these proceedings. Mot. at 7-8. Therefore, Respondents continue, taking depositions of these witnesses "would potentially significantly streamline the hearing." Mot. at 8.[6]

With respect to discovery directed at "other third-party witnesses," Complainant argues that Respondents' Motion fails to identify the type, scope, and target of this additional discovery as required by Rule 22.19(e). Resp. at 11. In their Reply, Respondents state, as clarification, that the additional third-party discovery they seek (not from IFF) is explicitly set forth in the Motion as "an order permitting the depositions of" the witnesses "named in footnote 4" of the Motion. Reply at 4. Respondents further state that the intended purpose of these depositions "is not to obtain discovery, but to perpetuate their testimony for use at the hearing, both by Respondents and by Complainant." *Id.* (emphasis omitted) (citing Federal Rules of Civil Procedure 32, which provides that a witness' deposition may be used in place of live testimony when the witness is more than 100 miles from the place of hearing and, in the interests of justice, exceptional circumstances warrant it).

While the Federal Rules of Civil Procedure ("FRCP") are often looked to for guidance in

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[6] Respondents also suggest that if these depositions are allowed and are video recorded, the edited video could be offered as testimony at hearing, thereby saving time at hearing and preserving the testimony in a form to which the parties could stipulate. Mot. at 8. The parties are advised that while depositions may form the basis for written direct testimony by the offering party, video recorded depositions are not a substitute for live testimony and would not obviate the need to present the live witness for cross-examination. Complainant also notes that while it is amendable to direct written testimony in accordance with the Rules of Practice, it opposes the use of edited or video testimony except by mutual agreement or order by the undersigned. Resp. at 12.

EPA cases, they do not govern these proceedings, *see, e.g., BWX Techs., Inc.*, 9 E.A.D. 61, 74-75 (EAB 2000) (involving FRCP Rule 56). Further, the reference to FRCP Rule 32 is unpersuasive here, as Respondents have not identified any "exceptional circumstances." Furthermore, requesting depositions for the purpose of preserving testimony rather than to obtain discovery, as the Reply indicates, is not a sufficient basis to permit depositions. While Respondents have specified the type of discovery (deposition on oral question) and the intended deponents (Robert Gephart, Steven Gephart, Ernie Willis, Troy Charpia, Russ Lloyd, Zygmunt Osiecki, and Rick Murray), they have not satisfied the requirements of Rule 22.19(e) to describe in detail the nature of the information sought. 40 C.F.R. § 22.19(e)(1). Consequently, it is not possible to conclude at this time that the proposed depositions will yield information that cannot reasonably be obtained by alternative methods of discovery or that there is a substantial reason to believe the evidence may not be preserved for hearing. 40 C.F.R. § 22.19(e)(3). At this time, Respondents' request for leave to conduct additional depositions, if necessary, is **DENIED**. If Respondents wish to seek additional deposition subpoenas at a later date, they shall file such a request in accordance with Rule 22.19(e). Such request must be received on or before **January 13, 2012**. If either party intends to request subpoenas to require attendance at the hearing, such request must be received on or before **April 23, 2012**.

III. Bifurcation

Finally, Respondents request that the hearing be bifurcated into separate liability and penalty components. Mot. at 9. Respondents argue that because the testimony of four listed witnesses relates solely to penalty matters, the severance of the penalty issue "would alleviate the need for all persons involved to undertake an extended stay away from their homes and offices, and would enable all persons involved to more precisely predict and plan for their travel and avoid unnecessary hotel nights . . . [t]hus . . . lead[ing] to a more efficient use of resources for all involved." Mot. at 10. Respondents also note, however, that more than 20 of the remaining witnesses, with anticipated testimony relevant to both liability and penalty, would need to be present at both hearings. Nevertheless, Respondents conclude that the suggested bifurcation might allow two shorter hearings to be more easily accommodated by the undersigned's docket. *Id.*

In its Response, Complainant argues that bifurcation would not achieve the savings Respondents suggest. Complainant notes that the large majority of witnesses have testimony relevant to both liability and penalty, and that EPA's witnesses would be seriously inconvenienced if they had to travel to Cleveland, Ohio, twice. Resp. at 12. Additionally, Complainant argues that the issues of liability, penalty, or penalty mitigation "can readily be presented together in this action, and the expense and inconvenience of a second hearing outweigh the burden on any prehearing preparation that may ultimately prove to be necessary." Resp. at 12-13 (citing *Stanchem, Inc.*, EPA Docket No. CWA-2-1-95-1040, 1998 EPA ALJ LEXIS 11 at *16 (ALJ, Feb. 13, 1998)). In their Reply, Respondents opine that Complainant's concern about the availability of travel funds would be diminished if the hearing were bifurcated, because these witnesses would not have to return for a second hearing on penalty if liability is

not established. Reply at 5.

At this time, there is insufficient information in the record to justify bifurcation. Respondents have not explained how a delay in the examination of four out of over 20 witnesses will allow for the elimination of a significant number of days from the three weeks of proposed hearing time, nor is their argument related to travel expenses persuasive.[7] Each party's position rests on the assumption that liability either will or will not be established, a proposition that is equally speculative on either side. Complainant has asserted that the issues of liability and penalty can more easily be addressed simultaneously and Respondents have not disputed that assertion. At this time, the request to bifurcate the hearing is **DENIED**.

IV. Revised Pre-Hearing Deadlines

Respondents also request that the prehearing deadlines in this matter be revised in order to allow the parties to complete the requested additional discovery and to process the large volume of pages submitted in the Prehearing Exchanges (over 24,000). Mot. at 2. On November 28, 2011, this Tribunal issued an Order Scheduling Hearing in which the parties were informed of certain prehearing deadlines for various filings, including non-dispositive motions, joint stipulations, and prehearing briefs. These deadlines were temporarily suspended in order to consider the instant Motion with full briefing. Respondents argue that revising the case schedule would allow the parties to complete all third-party discovery before finalizing their dispositive and non-dispositive motions, stipulations, and prehearing briefs. Mot. at 8-9.

In its Response, Complainant argues that the Motion should be denied. While it acknowledges the high volume of pages exchanged, Complainant notes that bulk (approximately 62%) of these documents were already provided to Respondents months ago, and over 6,600 of them were provided by, or prepared in conjunction with, Respondents themselves. Resp. at 4-5. Complainant argues that the parties have had ample time to review all new information and, although the identified fact witnesses number 18, Complainant expects many to be eliminated after pre-hearing motions. *Id.* Respondents dispute Complainant's assertion that IFF has already provided the necessary information to the parties, arguing that the documents to which Complainant points include statements by IFF that directly contradict Complainant's position in this matter and therefore cannot be the sum total of relevant information. Reply at 3.

Given that Respondents' request for depositions of four IFF employees has been granted, some adjustment to the prehearing deadlines is necessary, though not by the full 90 days that Respondents requested. To maximize the benefit of these depositions, the parties must be afforded the necessary time to reassess pending prehearing motions following the swift

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[7] It should be noted that federal employees generally pay fixed fares for air travel as well as lodging, with no benefit to reducing the possibility of overstays or early departures. In addition, bifurcation of the hearing would, at a minimum, double the transportation costs for each attendee (whether witness or counsel) aside from the four witnesses relevant only to penalty.

conclusion of the depositions. For good cause shown, the hearing is **POSTPONED** and Respondents' Motion to revise the case schedule is **GRANTED** as set forth below.

ORDER

1. Respondents' Motion for Depositions is **GRANTED** as follows:

   A. The parties are permitted to take the discovery depositions of the following current and former employees of International Flavors & Fragrances, Inc., identified as witnesses in the prehearing exchange: Theresa Barry, Donald DuRivage, Thomas Guido, and David Shepard.

   B. Corresponding subpoenas *duces tecum* are enclosed in the copy of this Order sent to Respondents' counsel, Mr. Lawrence W. Falbe, for service. Service of the Subpoenas, if necessary, shall be in accordance with 40 C.F.R. § 22.5(b)(1).

   C. Dates for the depositions are specified in the Subpoenas. By agreement of the parties and the deponent, the date of a deposition may be changed. However, no additional changes to the discovery timeline set forth in this Order shall be granted if the parties and the deponent change the date of a deposition.

2. Respondents' Motion for Depositions and other discovery any other third-party fact witness is **DENIED**.

3. By **February 24, 2012**, the parties shall conclude all discovery matters and shall file a Joint Status Report with revised estimates for the number of days needed to present each party's case-in-chief.

4. The deadline for filing motions for accelerated decision is **March 16, 2012.**

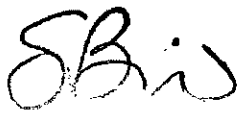
5. The deadline for filing a Joint Set of Stipulated Facts, Exhibits, and Testimony, is **April 9, 2012**. If the parties intend to exchange final lists of witnesses that will be called at hearing, a copy of such lists shall also be submitted to the undersigned or before April 9, 2012.

6. The deadline for filing motions *in limine* or motions to supplement the prehearing exchange is **April 16, 2012.**

7. If either party intends to submit a prehearing brief, such brief(s) shall be received on or before **April 23, 2012.**

8. The hearing in this matter is hereby **POSTPONED** until May 2012. The precise dates of the rescheduled hearing shall be determined by subsequent order following the parties' February 24, 2012, Joint Status Report. All other deadlines set forth in the November 28, 2011, Order Scheduling Hearing are hereby **VACATED**.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: December 27, 2011
Washington, D.C.

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

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order on Motion for Third Party Discovery and Order Postponing Hearing and Revising Case Schedule,** issued by Susan Biro, Chief Administrative Law Judge, in Docket No. RCRA-05-2011-0009, were sent to the following parties on this 27th day of December 2011, in the manner indicated:

Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, MC-E-19J
77 West Jackson Blvd.,
Chicago, IL 60604-3590 (w/subpoenas)
Fax: 312.692.2405

Copy by Facsimile and Pouch Mail to:

Catherine Garypie, Esq.
J. Matthew Moore, Esq.
Office of Regional Counsel
U.S. EPA / Region V
77 West Jackson Blvd.
Chicago, IL 60622 (w/o subpoenas)
Fax: 312.692.2513

Copy by Facsimile and Regular Mail to:

Lawrence W. Falbe, Esq.
Quarles & Brady, LLP
300 N. LaSalle Street, Suite 4000
Chicago, IL 60654 (w/subpoenas)
Fax: 312.632.1792

Copy by Regular Mail to:

Keven Drummond Eiber, Esq.
Meagan Moore, Esq.
Brouse McDowell, Esq.
600 Superior Avenue East, Ste. 1600
Cleveland, OH 44114 (w/o subpoenas)

Dated: December 27, 2011
Washington, DC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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

SUBPOENA DUCES TECUM

To: Theresa Barry
c/o International Flavors & Fragrances, Inc.
World Headquarters
521 West 57th Street
New York, New York 10019

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.19(e) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATES AND TIMES: January 25, 2012, at 2:00 pm, and continuing as needed

PLACE: International Flavors & Fragrances, Inc.,
World Headquarters
521 West 57th Street
New York, New York 10019

The deposition will be taken pursuant to Rule 30 of the Federal Rules of Civil Procedure, as applicable and may be continued from day to day until completed. The deposition will be recorded by stenographic means and may be recorded by sound and visual means.

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON at the above dates, time and place;

TO TESTIFY then and there under oath, make truthful response to all lawful inquiries and questions put to you by the Parties; and

TO REMAIN IN ATTENDANCE until excused.

YOU ARE FURTHER COMMANDED TO BRING WITH YOU AND PRODUCE at the earliest time and place identified above the following books, papers, letters or other documentary evidence related to the matters listed above:

1. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene AGR from 2005 to the present.

2. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene LE from 2005 to the present.

3. Documents sufficient to describe any process changes in the manufacture of Unitene AGR at IFF's Augusta, GA, plant from 2005 to the present.

4. Documents sufficient to describe any process changes in the manufacture of Unitene LE at IFF's Augusta, GA, plant from 2005 to the present.

5. All documents regarding the RCRA closure of any tank at IFF's Augusta, GA, plant used to store Unitene AGR and/or Unitene LE from 2005 to the present.

6. All documents consisting of or reflecting communications, whether written, oral or electronic, between IFF and any state or federal governmental agency, including U.S. EPA, regarding Unitene AGR and/or Unitene LE.

7. All documents that refer or relate to IFF's marketing and sale of Unitene AGR and/or Unitene LE.

8. All documents that refer or relate to IFF's undertaking to obtain trademark protection for its Unitene products.

PURSUANT TO THE AUTHORITY OF SECTION 3008(b) OF THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6928(b), FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COUTY AS COMTEMPT THEREOF.

ISSUED in Chicago, Illinois, this ____ date of _____, 201_.

NAME
Administrative Law Judge

This subpoena is to be served in accordance with Section 22.05(B)(1)(i) of the Consolidated Rules of Practice, 40 C.F.R. § 22.05(b)(1)(i).

Persons at whose request this Subpoena was issued:

Keven Drummond Eiber
Meagan L. DeJohn
Brouse McDowell, L.P.A.
1001 Lakeside Ave., Suite 1600
Cleveland, Ohio 44114
Telephone: (216) 830-6830
Facsimile: (216) 830-6807

Lawrence W. Falbe
Quarles & Brady LLP
300 N. LaSalle St., Suite 4000
Chicago, Illinois 60654
Telephone: (312) 715-5223
Facsimile: (312) 632-1792

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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

SUBPOENA DUCES TECUM

To: Donald DuRivage
c/o International Flavors & Fragrances, Inc.
World Headquarters
521 West 57th Street
New York, New York 10019

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.19(e) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATES AND TIMES: January 23, 2012, at 2:00 pm, and continuing as needed

PLACE: International Flavors & Fragrances, Inc.,
3005 International Blvd.
Augusta, GA 30903

The deposition will be taken pursuant to Rule 30 of the Federal Rules of Civil Procedure, as applicable and may be continued from day to day until completed. The deposition will be recorded by stenographic means and may be recorded by sound and visual means.

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON at the above dates, time and place;

TO TESTIFY then and there under oath, make truthful response to all lawful inquiries and questions put to you by the Parties; and

TO REMAIN IN ATTENDANCE until excused.

YOU ARE FURTHER COMMANDED TO BRING WITH YOU AND PRODUCE at the earliest time and place identified above the following books, papers, letters or other documentary evidence related to the matters listed above:

1. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene AGR from 2005 to the present.

2. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene LE from 2005 to the present.

3. Documents sufficient to describe any process changes in the manufacture of Unitene AGR at IFF's Augusta, GA, plant from 2005 to the present.

4. Documents sufficient to describe any process changes in the manufacture of Unitene LE at IFF's Augusta, GA, plant from 2005 to the present.

5. All documents regarding the RCRA closure of any tank at IFF's Augusta, GA, plant used to store Unitene AGR and/or Unitene LE from 2005 to the present.

6. All documents consisting of or reflecting communications, whether written, oral or electronic, between IFF and any state or federal governmental agency, including U.S. EPA, regarding Unitene AGR and/or Unitene LE.

7. All documents that refer or relate to IFF's marketing and sale of Unitene AGR and/or Unitene LE.

8. All documents that refer or relate to IFF's undertaking to obtain trademark protection for its Unitene products.

PURSUANT TO THE AUTHORITY OF SECTION 3008(b) OF THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6928(b), FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COUTY AS COMTEMPT THEREOF.

ISSUED in _____, _____, this ____ date of _____, 201_.

NAME
Administrative Law Judge

This subpoena is to be served in accordance with Section 22.05(B)(1)(i) of the Consolidated Rules of Practice, 40 C.F.R. § 22.05(b)(1)(i).

Persons at whose request this Subpoena was issued:

Keven Drummond Eiber
Meagan L. DeJohn
Brouse McDowell, L.P.A.
1001 Lakeside Ave., Suite 1600
Cleveland, Ohio 44114
Telephone: (216) 830-6830
Facsimile: (216) 830-6807

Lawrence W. Falbe
Quarles & Brady LLP
300 N. LaSalle St., Suite 4000
Chicago, Illinois 60654
Telephone: (312) 715-5223
Facsimile: (312) 632-1792

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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

SUBPOENA DUCES TECUM

To: Thomas Guido
c/o International Flavors & Fragrances, Inc.
World Headquarters
521 West 57th Street
New York, New York 10019

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.19(e) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATES AND TIMES: January 24, 2012, at 9:30 am, and continuing as needed

PLACE: International Flavors & Fragrances, Inc.,
3005 International Blvd.
Augusta, GA 30903

The deposition will be taken pursuant to Rule 30 of the Federal Rules of Civil Procedure, as applicable and may be continued from day to day until completed. The deposition will be recorded by stenographic means and may be recorded by sound and visual means.

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON at the above dates, time and place;

TO TESTIFY then and there under oath, make truthful response to all lawful inquiries and questions put to you by the Parties; and

TO REMAIN IN ATTENDANCE until excused.

YOU ARE FURTHER COMMANDED TO BRING WITH YOU AND PRODUCE at the earliest time and place identified above the following books, papers, letters or other documentary evidence related to the matters listed above:

1. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene AGR from 2005 to the present.

2. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene LE from 2005 to the present.

3. Documents sufficient to describe any process changes in the manufacture of Unitene AGR at IFF's Augusta, GA, plant from 2005 to the present.

4. Documents sufficient to describe any process changes in the manufacture of Unitene LE at IFF's Augusta, GA, plant from 2005 to the present.

5. All documents regarding the RCRA closure of any tank at IFF's Augusta, GA, plant used to store Unitene AGR and/or Unitene LE from 2005 to the present.

6. All documents consisting of or reflecting communications, whether written, oral or electronic, between IFF and any state or federal governmental agency, including U.S. EPA, regarding Unitene AGR and/or Unitene LE.

7. All documents that refer or relate to IFF's marketing and sale of Unitene AGR and/or Unitene LE.

8. All documents that refer or relate to IFF's undertaking to obtain trademark protection for its Unitene products.

PURSUANT TO THE AUTHORITY OF SECTION 3008(b) OF THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6928(b), FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COUTY AS COMTEMPT THEREOF.

ISSUED in _____, _____, this ____ date of _____, 201_.

NAME
Administrative Law Judge

This subpoena is to be served in accordance with Section 22.05(B)(1)(i) of the Consolidated Rules of Practice, 40 C.F.R. § 22.05(b)(1)(i).

Persons at whose request this Subpoena was issued:

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	
	)	**Docket No. RCRA-05-2011-0009**
Carbon Injection Systems LLC;	)	
Scott Forster, President;	)	
Eric Lofquist, Vice President	)	**Under Section 3008(a) of the Resource**
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Warren Township, OH 44483	)	**42 U.S.C. § 6928(a)**
	)	
EPA ID No. OHR000127910	)	
	)	
Respondents.	)	
	)	
	)	
	)	

SUBPOENA DUCES TECUM

To: David Shepard
c/o International Flavors & Fragrances, Inc.
World Headquarters
521 West 57th Street
New York, New York 10019

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.19(e) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATES AND TIMES: January 24, 2012, at 2:00 pm, and continuing as needed

PLACE: International Flavors & Fragrances, Inc.,
3005 International Blvd.
Augusta, GA 30903

The deposition will be taken pursuant to Rule 30 of the Federal Rules of Civil Procedure, as applicable and may be continued from day to day until completed. The deposition will be recorded by stenographic means and may be recorded by sound and visual means.

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON at the above dates, time and place;

TO TESTIFY then and there under oath, make truthful response to all lawful inquiries and questions put to you by the Parties; and

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2. Process diagrams that describe the manufacturing process at IFF's Augusta, GA, plant for Unitene LE from 2005 to the present.

3. Documents sufficient to describe any process changes in the manufacture of Unitene AGR at IFF's Augusta, GA, plant from 2005 to the present.

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