

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)
Gate #4 Blast Furnace Main Ave)
Warren Township, OH 44483)
)
EPA ID No. OHR000127910)
)
Respondents.)
)

RESPONDENTS CARBON INJECTION SYSTEMS LLC, SCOTT FORSTER
AND ERIC LOFQUIST'S JOINT MOTION FOR
ADMINISTRATIVE SUBPOENAS

Respondents Carbon Injection Systems LLC ("CIS"), Scott Forster and Eric Lofquist, by and through their undersigned counsel, pursuant to Section 3008(b) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928(b)) and Rule 22.21(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (40 C.F.R. 22.21(b)), respectfully request the Presiding Officer issue subpoenas for non-party witnesses Troy Charpia, Robert Gephart, Ernie Willis, Zygmunt Osiecki, Rick Murray, Thomas Guido, and David Shepherd to appear and testify at the hearing for this matter on the specified date, time and location noted in the attached subpoenas. The proposed subpoenas for the witnesses are attached hereto. Complainant does not oppose this motion.

I. Relevant Background

This civil administrative penalty case is brought pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §

6928(a), and its implementing state and federal regulations. The Complaint involves CIS's former operations at its facility in Warren Township, Ohio. (Compl. ¶ 11). CIS's operations at the facility included purchasing oil products, often through brokers, and selling them to its customer, a steel mill. The steel mill used the oil supplied by CIS as a source of carbon, an essential ingredient for the production of iron in its blast furnace. (Comp. ¶¶ 17 and 28).

Complainant, the United States Environmental Protection Agency ("U.S. EPA") alleges that CIS stored and treated hazardous waste at its facility without a permit or interim status. Specifically, U.S. EPA alleges that Respondents accepted hazardous waste at the facility on one hundred and eighty-nine (189) occasions between August 9, 2006 and February 27, 2009, without a permit. (Compl. ¶¶ 73-75). The Complaint against Respondents includes nine additional allegations related to the storage and treatment of this same alleged hazardous waste. (See Complaint Counts II-X).

II. Legal Standard

Section 3008(b) of RCRA (42 U.S.C. § 6928(b)) provides authority to issue subpoenas for the attendance and testimony of witnesses. Section 22.21(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules") further authorizes the use of subpoenas to compel attendance of witnesses. "The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefore, and the materiality and relevancy of the evidence to be adduced." 40 C.F.R. § 22.21(b). See *In the Matter of Crown Central Petroleum Corp.*,

Docket No. CWA-8-2000-06, 2001 EPA ALJ LEXIS 113 at *3-4 (ALJ, April 26, 2001) (condition precedent to granting a request for the issuance of subpoenas requires a showing of the grounds and necessity, along with the materiality and relevancy of the evidence); *In the Matter of Robert and Susan Wheeler*, Docket No. CWA-05-2001-0019, 2002 ALJ LEXIS 63 at *5 (ALJ October 1, 2002) (witness unable to be present at the hearing unless issued an administrative subpoena).

III. Discussion

Testimony from Troy Charpia, Robert Gephart, Ernie Willis, Zygmunt Oseicki, Rick Murray, Thomas Guido, and David Shepherd is necessary, material and relevant to Respondents' defense at the hearing. Subpoenas for each individual are necessary because all of these individuals are non-party fact witnesses and none will appear at the hearing and testify without a subpoena. Respondents' Initial Joint Prehearing Exchange previously identified these seven witnesses and provided the scope of testimony for each. Complainant has also identified four of these witnesses, Troy Charpia, Robert Gephart, Ernie Willis, and Zygmunt Osiecki in its prehearing exchange. The materiality and relevancy on each individual's testimony is detailed below.

Troy Charpia

Troy Charpia, a salesman for Innovative Waste Management ("IWM"), will testify regarding the offering for sale to CIS, and the careful consideration to purchase by CIS, of various bulk chemical materials, and his communications with Scott Forster regarding potential sales. Mr. Charpia also will testify regarding efforts undertaken by IWM and CIS to obtain regulatory approval for the sale of K022 waste material and CIS's ultimate decision not to purchase K022 waste material in light of Ohio EPA's

interpretation of the RCRA solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Charpia further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA. Mr. Charpia's testimony is necessary and relevant to Respondents' understanding in 2005 and 2006 that use of injectants in the blast furnace did not constitute burning for energy recovery, as well as whether Respondents Scott Forster and Eric Lofquist were operators of the CIS facility.

Robert Gephart

Robert Gephart is the Vice President of Sales at Geptek, Inc., a broker of bulk industrial chemical materials. Mr. Gephart will testify regarding the offering for sale to CIS, and the consideration to purchase by CIS, of material manufactured by JLM Chemicals, Inc., in 2005, and CIS's subsequent decision not to purchase the material. Mr. Gephart further will testify regarding his understanding, in 2005, that the sale of the JLM material for use or reuse as an ingredient in an industrial process to make a product (production of iron), or as an effective substitute for a commercial product, did not violate RCRA. Mr. Gephart further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA. Mr. Gephart's testimony is necessary and relevant to the issue of whether the material at issue is properly considered a hazardous waste, as well as whether Respondents Scott Forster and Eric Lofquist were operators of the CIS facility

Ernie Willis

Ernie Willis is employed by IWM. Mr. Willis will testify regarding efforts undertaken by IWM and CIS to obtain regulatory approval for the sale of K022 waste material from Georgia Gulf Chemicals in Louisiana, and CIS's ultimate decision in early 2006 not to purchase K022 waste material in light of Ohio EPA's interpretation of the solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Willis further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA. Mr. Willis' testimony is necessary and relevant to whether the material at issue is a hazardous waste, as well as whether Respondents Scott Forster and Eric Lofquist were operators of the CIS facility.

Zygmunt Osiecki

Zygmunt Osiecki is employed by Neville Chemical Company, a manufacturer of bulk industrial chemical materials. Mr. Osiecki is expected to testify regarding efforts undertaken by Neville Chemical Company and Respondents to obtain regulatory approval for the sale of a characteristic hazardous waste material (recovered oil), and CIS's ultimate decision not to purchase the material in light of Ohio EPA's interpretation of the solid waste exclusion for the use or reuse as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. Mr. Osiecki further will testify that Neville Chemical Company did not ship any hazardous waste materials to the CIS facility. Mr. Osiecki further will testify that he is without knowledge regarding the active involvement of Eric Lofquist or Scott Forster in the handling of

hazardous waste at CIS and is without knowledge of any participation by either of them in any conduct that violated RCRA. Mr. Osiecki's testimony is necessary and relevant to whether the material at issue is a hazardous waste, as well as whether Respondents Scott Forster and Eric Lofquist were operators of the CIS facility, and cannot be introduced at the hearing without his presence at the hearing.

Rick Murray

Rick Murray is the principal of Aqua Fuels, a company that buys and sells bulk industrial materials. Aqua Fuels sold CIS two Unitene products manufactured by International Flavors and Fragrances, Inc. ("IFF") which are the subject of the administrative complaint. Mr. Murray will testify regarding his knowledge of the manufacturing of the products, the marketing and sale of the products by IFF and Aqua Fuels, and the shipment of the products to CIS's Ohio facility. Mr. Murray also will testify regarding the market for such products generally. Mr. Murray's testimony is necessary and relevant to Respondents' position that the IFF materials are not hazardous wastes.

Thomas Guido¹

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

¹ Complainant has advised Respondents that it will seek subpoenas for IFF employees Thomas Guido and David Shepherd as well, but Complainant did not agree to request these subpoena's jointly.

identified as a waste, or discarded or handled as a waste. Mr. Guido's testimony is necessary and relevant to Respondents' position that the IFF materials are not hazardous wastes.

David Shepherd

David Shepherd became Environmental Health and Safety Manager at IFF's Augusta Plant in 2008. Mr. Shepherd will testify regarding the internal process changes that IFF undertook at the Augusta Plant when it decided to isolate the distillate fractions that were later marketed as "Unitene" from the Augusta Plant's organic wastes, and sell those fractions as a useful, non-hazardous product, and the pricing of that material. Mr. Shepherd will also testify regarding his knowledge of the intended use of the Unitene products by CIS, i.e., use as an ingredient for the manufacture of iron in a blast furnace. Mr. Shepherd's testimony is necessary and relevant to Respondents' position that the IFF materials are not hazardous wastes.

III. Conclusion

For the foregoing reasons, Respondents respectfully request that the Presiding Officer enter an order granting Respondents' Motion for Administrative Subpoenas and that the subpoenas be returned to Respondents for service on the non-party witnesses. The proposed subpoenas are attached hereto as Exhibit 1.

Respectfully submitted,

Keven Drummond Eiber (OH 0043746)
Meagan L. Moore (OH 0079429)
Brouse McDowell, L.P.A.
1001 Lakeside Ave., Suite 1600
Cleveland, Ohio 44114
Telephone: (216) 830-6830
Facsimile: (216) 830-6807



Lawrence W. Falbe (IL 06224888)

Quarles & Brady LLP

300 N. LaSalle St., Suite 4000

Chicago, Illinois 60654

Telephone: (312) 715-5223

Facsimile: (312) 632-1792

larry.falbe@quarles.com

*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, certify that the foregoing Respondents Carbon Injection Systems LLC, Scott Forster and Eric Lofquist's Joint Motion for Administrative Subpoenas was sent on May 25, 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

Copy by hand-delivery to:

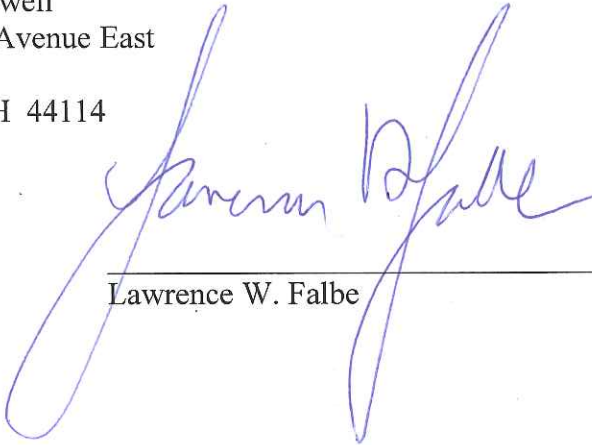
Catherine Garypie, Esq. (garypie.catherine@epamail.epa.gov)
Matthew Moore, Esq. (moore.matthew@epamail.epa.gov)
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60622

Copy by E-mail and Regular Mail to:

Steven Sarno (sarno.steven@epamail.epa.gov)
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460

Keven Eiber, Esq. (keiber@brouse.com)
Meagan Moore, Esq. (mmoore@brouse.com)
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

May 25, 2012



Lawrence W. Falbe

EXHIBIT 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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| | | |
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| 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 AD TESTIFICATION

To: Troy Charpia
Innovative Resource Management
125 Cross Creek Drive
Summerville, SC 29485

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.21(b) 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: June 26, 2012, at 8:30 am, and continuing as needed

PLACE: Carl B. Stoke U.S. Courthouse
U.S. District Court, Northern District of Ohio
801 W. Superior Avenue
Cleveland, Ohio 44113
Courtroom 17A

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.

ISSUED in Washington, D.C. this ____ date of _____, 2012.

Judge Susan L. Biro
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. Moore
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

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SUBPOENA AD TESTIFICACION

To: Robert Gephart
Geptek, Inc.
927 Sheffield Ave
Dyer, IN 46311

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To: Ernie Willis
Innovative Resource Management
125 Cross Creek Drive
Summerville. SC 29485

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| Respondents. |) | |
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SUBPOENA AD TESTIFICATION

To: Zygmunt Osiecki
Neville Chemical
2800 Neville Road
Pittsburg, PA 15225-1496

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SUBPOENA AD TESTIFICACION

To: Thomas Guido
Regional Operations Manager
International Flavors and Fragrances, Inc.
3005 International Blvd.
Augusta, GA 30906

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6928(b), and Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

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SUBPOENA AD TESTIFICATION

To: David Shepherd
Environmental Health and Safety Manager
International Flavors and Fragrances, Inc.
3005 International Blvd.
Augusta, GA 30906

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SUBPOENA AD TESTIFICACION

To: Rick Murray
Aqua Fuels
214 Hospital Drive North East
Fort Walton Beach, FL 32548

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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.

ISSUED in Washington, D.C. this ____ date of _____, 2012.

Judge Susan L. Biro
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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