



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of:)
Carbon Injection Systems LLC,)
Scott Forster,)
and Eric Lofquist,)
Respondents.)

Docket No. RCRA-05-2011-0009

ORDER ON PARTIES' MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL PREHEARING EXCHANGES

I. Complainant's Motion

On April 23, 2012, Complainant filed a Motion for Leave to File its Second Supplemental Prehearing Exchange ("Complainant's Motion" or "C's Mot.") in which Complainant seeks leave to supplement its prehearing exchange information with additional exhibits (identified as CX172 - CX194).1 C's Mot. at 1-2. Complainant sets forth specific justifications for the addition of these exhibits in Complainant's Motion. C's Mot. at 3-4. Exhibits CX172 through CX182 were previously provided to Respondents and the Court in connection with Complainant's and Respondents' Motions for Accelerated Decision. Exhibits CX183 and CX184 are documents of which Complainant recently became aware. Exhibits CX185 through CX192 are documents which Complainant recently obtained from the Georgia Department of Natural Resources. Exhibit CX193 is a revised penalty narrative which reflects corrections to the penalty calculation. Exhibit CX194 is an email which was inadvertently omitted from Complainant's earlier prehearing exchanges. Id. Respondents do not oppose Complainant's Motion.

Section 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules") requires a party to "promptly supplement or correct [its prehearing] exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated" 40 C.F.R. § 22.19(f). Motions to supplement a prehearing exchange should be

1 Complainant mistakenly refers on page 4 of Complainant's Motion to a non-existent exhibit CX195. In a related error, Complainant's description of documents CX193 to CX195 at pages 3 and 4 of Complainant's Motion are also incorrect. The correct numbering and descriptions appear at pages 1 and 2 of Complainant's Motion.

granted unless there is evidence of bad faith, delay tactics, or undue prejudice. *Service Oil, Inc.*, EPA Docket No. CWA-08-2005-0010, 2006 EPA ALJ LEXIS 16 at *9 (ALJ, April 12, 2006).

In this proceeding, Complainant has filed its Motion promptly and the hearing is not scheduled to begin until June 18, 2012. In the absence of any evidence of bad faith, delay tactics or undue prejudice, Complainant's unopposed Motion is **GRANTED**.

II. Respondents' Motion

On April 23, 2012, Respondents filed a Motion for Leave to File First Supplemental Joint Prehearing Exchange ("Respondents' Motion" or "Rs' Mot.") in which Respondents seek leave to supplement their prehearing exchange information with additional witnesses (John Dzugan and Scott Forster) and additional exhibits (identified as RX99 - RX119). Rs' Mot. at 2-4. Respondents set forth specific justifications for the addition of these witnesses and exhibits in Respondents' Motion. Rs' Mot. at 4-7. The additional witnesses filed affidavits in connection with the parties' Motions for Accelerated Decision at which point the need for their testimony at hearing became apparent. Mot. at 4. Exhibit RX99 supplements information previously provided to EPA. Exhibits RX100, RX113 to RX114, and RX116 to RX119 consist of documents and videos which illustrate the operation of blast furnaces. Exhibits RX101 to RX103 and RX108 to RX110 are reports and declarations of previously identified experts. Exhibits RX104 to RX107, and RX111 to RX112 are EPA guidance letters the relevance of which became apparent in connection with the parties' Motions for Accelerated Decision. Exhibit RX115 is a flowchart used to determine if material is waste and provided for clarification at hearing. Mot. at 5-7. Exhibits RX101 to RX112 have already been provided to Complainant and the Court. Complainant has not opposed Respondents' Motion.

Applying the standard of review described above in relation to Complainant's Motion: Respondents have filed their Motion promptly; the hearing is not scheduled to begin until June 18, 2012; there is no evidence of bad faith, delay tactics or undue prejudice. Accordingly, Respondents' unopposed Motion for leave to file a supplemental prehearing exchange is **GRANTED**.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge


Dated: May 18, 2012
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 certify that the foregoing **Order On Parties' Motions For Leave To File Supplemental Prehearing Exchanges**, dated May 18, 2012, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: May 18, 2012

Original and One Copy By Regular To:

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