

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

6/20/12 11:00 AM
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EPA 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 RESPONSE TO COMPLAINANT'S MOTION
FOR ISSUANCE OF SUBPOENAS**

Respondents Carbon Injection Systems LLC, Scott Forster and Eric Lofquist, for their response to Complainant's Motion for Issuance of Subpoenas, state as follows:

Complainant filed its motion for the issuance of subpoenas directing four individuals to appear and testify on the dates set forth in the proposed subpoenas, which are attached to the motion. One of the proposed subpoenas directs Respondent Eric Lofquist to appear on June 20, 2012, at 9:00 a.m. and to remain in attendance until expressly excused by the Administrative Law Judge.

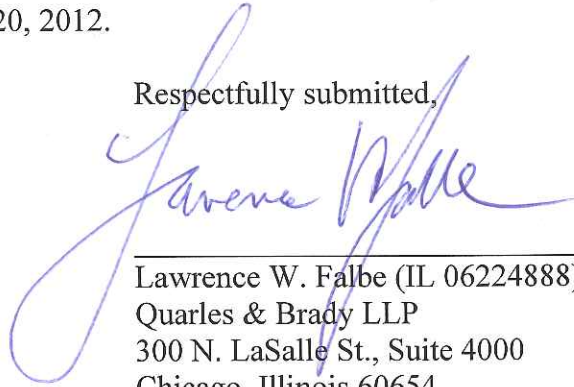
Prior to Complainant filing its motion, Respondents on several occasions advised Complainants' counsel that Mr. Lofquist would be unable to attend the hearing on June 20, 2012, but that otherwise he was available. Respondents represented to Complainant, as well, that they would make both Mr. Forster and Mr. Lofquist available to

Complainant as witnesses, except for Mr. Lofquist on that one date. Respondents also stated that subpoenas would not be necessary to assure their attendance, but that if Complainant wished to insist on subpoenas, counsel for Respondents were authorized to accept service. Complainant was advised of Mr. Lofquist's unavailability on June 20, 2012 at least three times -- during the pre-hearing status conference on May 22, 2012, during a follow-up telephone conference among counsel on May 23, 2012, and in an e-mail message to counsel on May 24, 2012. A copy of counsel's e-mail exchange is attached as Exhibit A. Mr. Lofquist has previously scheduled business meetings on June 20, 2012, with several customers and sales representatives who have made previous arrangements to travel from out of town for the meetings. It is not feasible to reschedule these meetings.

Notwithstanding these communications, Complainant seeks to compel Mr. Lofquist's attendance on June 20, 2012. Complainant's request in this regard is unreasonable and unduly burdensome. Mr. Lofquist's testimony can be provided by him on one of the other hearing dates. If Complainant requires his testimony as a predicate to an expert's testimony, although it is not clear that this is necessary, Mr. Lofquist is available to testify on either June 18 or 19, 2012. He also is available after June 20, 2012.

WHEREFORE, for these reasons, Respondents request that Complainant's Motion for Issuance of Subpoenas be denied in part, that any subpoena directed to Mr. Lofquist be for a day other than June 20, 2012, and that Mr. Lofquist be excused from attendance at the hearing on June 20, 2012.

Respectfully submitted,



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

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
keiber@brouse.com
mmoore@brouse.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, hereby certify that the foregoing Response to Complainant's Motion for Issuance of Subpoenas was sent on May 30, 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

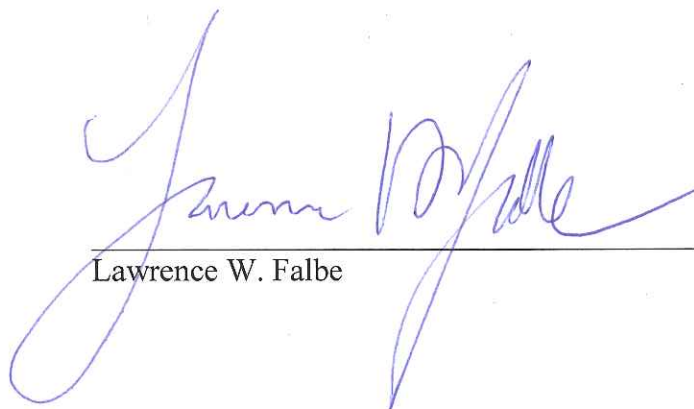
Copy by hand delivery to:

Catherine Garypie, Esq.
Jeffrey Cahn, Esq.
Matthew Moore, Esq.
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60622

Copy by E-Mail to:

Keven Drummond Eiber, Esq.
Meagan L. Moore, Esq.
Brouse McDowell
600 Superior Avenue East, Suite 1600
Cleveland, OH 44114

May 30, 2012



Lawrence W. Falbe

Eiber, Keven D.

From: Eiber, Keven D.
Sent: Thursday, May 24, 2012 6:30 PM
To: 'Jeff Cahn'; Moore, Meagan
Cc: Catherine Garypie; 'Falbe, Lawrence W.'; Matthew Moore; 'Steven Sarno'
Subject: RE: Motion for Subpoenas

Jeff,

Respondents do not oppose US EPA's motion for issuance of subpoenas to Mr. Shepherd and Mr. Guido. I did not hear back from anyone on your side regarding our representation that we would make Mr. Lofquist and Mr. Forster available and that no subpoena was necessary for them. As I mentioned, the only day that I know that Mr. Lofquist has other commitments and is unable to be present at the hearing is June 20, 2012. Having advised you of that commitment, and not having heard back, I am unable to consent to your motion as to my two clients because I don't know what day you intend to put on the subpoena. I will reiterate, however, that if you do feel you need to subpoena them, I am authorized to accept service.

Thank you,

Keven Eiber

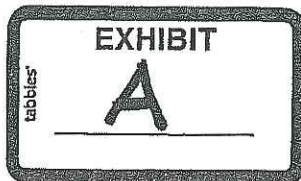
Keven Drummond Eiber
BROUSE McDOWELL
600 Superior Avenue, East
Suite 1600
Cleveland, Ohio 44114-2603
216.830.6830
216.830.6816 direct
216.830.6807 fax
216.406.1183 cell

From: Jeff Cahn [mailto:Cahn.Jeff@epamail.epa.gov]
Sent: Thursday, May 24, 2012 2:42 PM
To: Moore, Meagan
Cc: Catherine Garypie; Eiber, Keven D.; 'Falbe, Lawrence W.'; Matthew Moore
Subject: Re: Motion for Subpoenas

We will not oppose your motion for subpoenas.

Please let me know if Respondents will oppose EPA's motion for issuance of subpoenas for Guido, Shepherd, Lofquist, and Forster.

Jeffrey A. Cahn, Associate Regional Counsel
Office of Regional Counsel (Mail Code C-14J)
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604
PH: 312-886-6670
FAX: 312-692-2971
email: cahn.jeff@epa.gov



5/29/2012

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▼ "Moore, Meagan" ---05/24/2012 01:33:05 PM---As we discussed in our call yesterday Respondents are requesting hearing subpoenas for Troy Charpia,

From: "Moore, Meagan" <MMoore@brouse.com>
To: Catherine Garypie/R5/USEPA/US@EPA, Matthew Moore/R5/USEPA/US@EPA, Jeff Cahn/R5/USEPA/US@EPA
Cc: "Falbe, Lawrence W." <larry.falbe@quarles.com>, "Eiber, Keven D." <KEiber@brouse.com>
Date: 05/24/2012 01:33 PM
Subject: Motion for Subpoenas

As we discussed in our call yesterday Respondents are requesting hearing subpoenas for Troy Charpia, Robert Gephart, Ernie Willis, Zygmunt Ostecki, Rick Murray, Thomas Guido, and David Shepherd. Does EPA intend to oppose this motion?

Thanks.

Meagan L. Moore
Associate
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114
Phone: 216.830.6830, ext. 522
DID: 216.830-6822
Fax: 216.830.6808
E-mail: mmoore@brouse.com

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