

**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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**COMPLAINANT’S MOTION FOR LEAVE TO FILE ITS SECOND SUPPLEMENTAL  
PREHEARING EXCHANGE**

Comes now Complainant, the United States Environmental Protection Agency, Region 5 (Complainant or the Region), by and through its counsel, pursuant to Rules 22.16 and 22.19(f) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules or Rules), hereby files its Motion for Leave to File Its Second Supplemental Prehearing Exchange. Respondents have informed EPA that they do not intend to oppose this motion. In support of this Motion, Complainant states as follows:

**I. Background**

Complainant seeks to file its Second Supplemental Prehearing Exchange, which will contain the following:

**A. Additional Exhibits**

Complainant is adding a number of documents as exhibits for various reasons. CX172-173 are blast furnace diagrams previously provided to the Court and Respondents and as attachments to the Fruehan declaration supporting Complainants Motion for Partial Accelerated

Decision (“Complainant’s Motion”). CX174 is an EPA guidance document previously provided to the Court and Respondents as an attachment to Complainant’s Motion. CX175 is EPA guidance material previously provided to the Court and Respondents as an attachment to Complainant’s Response to Respondents’ Motion for Accelerated Decision (“Complainant’s Response”). CX176-182 are guidance letters from EPA to members of the regulated community or state environmental protection agencies which were previously provided to the Court and Respondents as attachments to Complainant’s Response and Complainant’s Reply to Respondents’ Memorandum in Opposition to Complainant’s Motion for Partial Accelerated Decision as to Liability. CX183-184 are National Institute of Health documents of which Complainant recently became aware. CX185-187 are Hazardous Waste Reduction Plans related to the International Flavors and Fragrances (“IFF”) Augusta Georgia Plant, which Complainant recently obtained from the Georgia Department of Natural Resources (“GDNR”). CX188-190 are Inspection Reports related to the IFF Augusta Georgia Plant, which Complainant recently obtained from the GDNR. CX191-192 are IFF job description sheets which Complainant recently obtained from the GDNR. CX193 is a revised penalty narrative, which is based on EPA corrections to the penalty calculation. CX194 is an email demonstrating contact from an insurer for Respondent CIS regarding a claim made, which was inadvertently omitted from earlier prehearing exchanges documents submitted by Complainant.

## **II. Standard of Review**

Section 22.19(f) of the Rules states that a party must supplement prior exchanges “when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.” 40 C.F.R. § 22.19(f); *In the Matter of Mercury Vapor Processing*

*Technologies, Inc., et al.*, Docket No. RCRA-05-2010-0015, 2011 EPA ALJ LEXIS 16 at \*4 (July 15, 2011); *In the Matter of Aguakem Caribe, Inc.*, Docket No. RCRA-02-2009-7110, 2010 EPA ALJ LEXIS 11 at \*6 (May 14, 2010), and; *In the Matter of: 99 Cents Only Stores*, Docket No. FIFRA-9-2008-0027, 2009 EPA ALJ LEXIS 9 (June 18, 2009). Furthermore, motions to supplement a prehearing exchange should be granted unless there is evidence of bad faith, delay tactics, or undue prejudice. *In the Matter of Service Oil, Inc.*, Docket No. CWA-08-2005-0010, 2006 EPA ALJ LEXIS 16 at \*9 (April 12, 2006).

### **III. Discussion**

The additional exhibits are being submitted now for the following reasons: (1) CX172-173 are blast furnace diagrams previously provided to the Court and Respondents and are being submitted as separate documents for the convenience of the Court and Respondents; (2) CX174 is a widely available EPA guidance document (published on [www.epa.gov](http://www.epa.gov)) previously provided to the Court and Respondents and is being submitted as separate documents for the convenience of the Court and Respondents; (3) CX175 is widely available EPA guidance material (published on [www.epa.gov](http://www.epa.gov)) previously provided to the Court and Respondents and is being submitted for the convenience of the Court and Respondents; (4) CX176-182 are widely available guidance letters (published on [www.epa.gov](http://www.epa.gov)) from EPA to members of the regulated community or state environmental protection agencies which were previously provided to the Court and Respondents and are being submitted for the convenience of the Court and Respondents; (5) CX183-84 are is widely available National Institute of Health guidance materials (published on [www.nih.gov](http://www.nih.gov)) of which Complainant recently became aware and which are being submitted for the convenience of the Court and Respondents; (6) CX186-193 are documents related to the IFF Augusta, Georgia, facility which Complainant recently obtained from the GDNR; (7) CX194 is a

revised penalty narrative, which is based on EPA corrections to the penalty calculation; (8) CX195 is an email which was inadvertently omitted from earlier prehearing exchanges documents submitted by Complainant. In short, Complainant is providing the Court and Respondents with more complete and updated information, consistent with Section 22.19(f) of the Rules. 40 C.F.R. § 22.19(f). Complainant's prehearing exchange is incomplete without this additional information. Furthermore, this Motion is being submitted approximately two months prior to the start of the hearing, and prior to the deadline for motions to supplement prehearing exchange set in this Court's Order on Agreed Motion for Modifying the Pre-Hearing Schedule (April 10, 2012). Accordingly, Respondents have ample time to review the information. In fact, Respondents already have copies of most of the exhibits being submitted by Complainant. Thus, Respondents will suffer no prejudice from the addition of the new witness information and proposed exhibits provided in Complainant's Second Supplemental Prehearing Exchange.

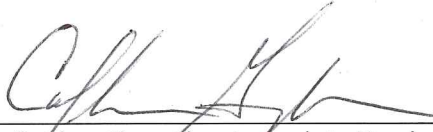
#### **IV. Conclusion**

For the foregoing reasons, Complainant respectfully requests that the Presiding officer grant it leave to file its Second Supplemental Prehearing Exchange.

Respectfully Submitted,

Counsel for EPA:

4/23/12  
Date



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**CERTIFICATE OF SERVICE**

**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 Motion for Leave to File Its Second Supplemental Prehearing Exchange", dated April 23<sup>rd</sup>, 2012, 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 overnight mail to:

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Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
c/o Lawrence W. Falbe  
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300 N. LaSalle Street, Suite 4000  
Chicago, IL 60654

Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
U.S. EPA Office of the Hearing Clerk  
1099 14th St. NW  
Suite 350, Franklin Court  
Washington, DC 20005

4/23/12  
Date

  
\_\_\_\_\_  
Catherine Garypie, Associate Regional Counsel

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**COMPLAINANT'S SECOND SUPPLEMENTAL PREHEARING EXCHANGE**

Comes now Complainant, the United States Environmental Protection Agency, Region 5 (Complainant or the Region), by and through its counsel, pursuant to Rules 22.16 and 22.19(f) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules or Rules), hereby files its Second Supplemental Prehearing Exchange. 40 C.F.R. §§ 22.16 and 22.19(f)

**Additional Exhibits<sup>1</sup>**

- CX172-Blast furnace diagram
- CX173-Blast furnace diagram
- CX174-12/12/90 EPA guidance regarding "Individual Liability of Corporate Officers as Operators Under RCRA"
- CX175-November 1986 Monthly Summary
- CX176-2/6/95 letter from Petruska (EPA) to Osburne (United Beechcraft)
- CX177-7/11/94 letter from Bussard (EPA) to Gable (WV DEP)
- CX178-3/19/86 letter from Williams (EPA) to Keenan
- CX179-3/8/86 letter from Williams (EPA) to Weaver (Aero Sport, Inc.)
- CX180-12/23/86 letter from Williams (EPA) to Corden (Enviropact)
- CX181-7/31/89 letter from Barnes (EPA) to Haake (McDonnell Douglas)
- CX182-7/20/94 letter from Shapiro (EPA) to Ferguson (TNRCC)
- CX183-National Institute of Health Review of Toxicological Literature for Iso E Super
- CX184-National Institute of Health Review of Toxicological Literature for Turpentine
- CX185-IFF 2004 Hazardous Waste Reduction Plan (\*CBI)

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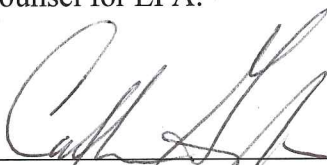
<sup>1</sup> The exhibits are being provided on discs.

CX186-IFF 2007 Hazardous Waste Reduction Plan (\*CBI)  
CX187-IFF 2009 Hazardous Waste Reduction Plan (\*CBI)  
CX188-GADNR Inspection Report - 12/6/07 Inspection (\*CBI)  
CX189-GADNR Inspection Report - 1/15/09 Inspection (\*CBI)  
CX190-GADNR Inspection Report - 11/3/11 Inspection (\*CBI)  
CX191-IFF 1/17/08 Job Description QES Manager (\*CBI)  
CX192-IFF 12/5/08 Job Description Planning Coordinator (\*CBI)  
CX193- Revised Penalty Narrative (\*CBI)  
CX194-Email from Beedle (EPA) to Nesheiwat (Chartis)

Respectfully Submitted,

Counsel for EPA:

4/23/12  
Date



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**CERTIFICATE OF SERVICE**

**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 First Supplemental Prehearing Exchange", dated April 23<sup>rd</sup>, 2012, was sent this day in the following manner to the addressees listed below:

Original and one copy hand-delivered to:

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Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
U.S. EPA Office of the Hearing Clerk  
1099 14th St. NW  
Suite 350, Franklin Court  
Washington, DC 20005

4/23/12  
Date

  
Catherine Garypie, Associate Regional Counsel

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