

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )  
)  
**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.** )  
\_\_\_\_\_ )

**Docket No.**  
  
**Proceeding to Assess a Civil Penalty**  
  
**Under Section 3008(a) of the Resource  
Conservation and Recovery Act,  
42 U.S.C. § 6928(a)**

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**COMPLAINANT’S RESPONSE TO RESPONDENTS’ MOTION FOR LEAVE TO FILE  
THEIR SECOND SUPPLEMENTAL JOINT PREHEARING EXCHANGE**

Comes now Complainant, the United States Environmental Protection Agency, Region 5 (Complainant), by and through its counsel, pursuant to Rule 22.16 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), 40 C.F.R. § 22.16, hereby files Complainant’s Response to Respondents’ Motion For Leave to File Their Second Supplemental Joint Prehearing Exchange. In response to Respondents’ motion, Complainant states as follows:

In motioning this Court for leave to file their Second Supplemental Joint Prehearing Exchange, Respondents’ explanation of the relevant standard of review is simply wrong. Respondents assert that this Court is bound by the standard in Section 22.19(f) of the Consolidated Rules, 40 C.F.R. § 22.19(f). Pursuant to Section 22.19(f), a party must supplement its prior prehearing exchange when the party learns that the information exchanged is “incomplete, inaccurate or outdated, and additional or corrective information has not otherwise

been disclosed to the other party . . . .” *Id.* Respondents accurately note that, when motioned prior to 15 days before the hearing date, administrative courts have interpreted this provision to allow supplementation “unless there is evidence of bad faith, delay tactic, or undue prejudice.” Respondents’ Motion at 2 (citing *In the Matter of Service Oil, Inc.*, Docket No. CWA-08-2005-0010, 2006 EPA ALJ LEXIS 16 \*4, (April 12, 2006) (granting a motion to supplement the prehearing exchange that was filed more than 15 days prior to the hearing date). However, in the present case, Respondents’ motion was not made prior to 15 days before hearing. Pursuant to Section 22.22(a)(1) of the Consolidated Rules, in such circumstances, the Presiding Officer “shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.” 40 C.F.R. § 22.22(a)(1). Respondents conveniently omit this standard, requesting instead that this Court grant their Motion based upon a standard that is irrelevant.

Respondents’ cannot satisfy the standard in Section 22.22(a)(1) of the Consolidated Rules. In failing to address the relevant standard, Respondents have also failed to even attempt to show good cause for failing to exchange the required information. Cause is simply not discussed in Respondents’ Motion; therefore, Respondents’ Motion should be denied.

Moreover, even if Respondents’ attempted to show good cause for their failure to disclose the required information, no such good cause exists. While the correction of RX21 is a mere clerical remedy to which Complainant does not object, RX116 seeks the admission of documents that were allegedly created approximately six years ago and maintained within Respondents’ control during the entire course of this proceeding. In fact, Complainant explicitly sought the documents at issue in EPA’s February 8, 2010 Request for Information, which

requested “[c]opies of all documents reflecting material received by [WCI Steel] from CIS.” CX1 at EPA023. In response to EPA’s request, Respondents’ did not supply the requested records, but rather stated the following: “[t]he documents reflecting material received by WCI from CIS would consist of invoices. A sample of such invoices is included as Exhibit 12.m.1. CIS will produce all such invoices upon request.” CX2 at EPA61. This response clearly demonstrates that Respondents had the ability to provide all invoices in their Initial Joint Prehearing Exchange in November 2011. Instead, Respondents chose to wait until 12 days prior to hearing to disclose only another small subset of invoices, presumably the subset that most effectively supports their defense. Such selective disclosure should not be permitted by this Court, especially at a date so close to hearing.

Finally, what is most alarming regarding Respondents’ request to introduce RX116 can be charitably labeled as its lack of authenticity. The top of each invoice of RX116 identifies to whom the invoice is billed. Each invoice of RX116 identifies Severstal Warren, Inc. as the purchaser of oil from CIS. However, the invoices document sales that occurred in 2005, and Severstal Warren, Inc. did not buy the facility at which the blast furnace is located from WCI Steel, Inc. until May 16, 2008. Such a discrepancy must immediately call into question RX116’s authenticity as well as Respondents’ intentions in proffering it.

Based on the foregoing reasons, Complainant respectfully requests that this Court grant Respondents’ request to correct RX21 and deny Respondents’ request to add RX116.

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Respectfully Submitted,

Counsel for EPA:

6/6/12

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 Response to Respondents' Motion for Leave to File Their Second Supplemental Joint Prehearing Exchange", dated June 6, 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  
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Copy via overnight mail 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  
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Washington, DC 20005

6/6/12  
Date

  
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Charles Rodriguez, Student Aide

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