



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

February 3, 2012

The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.,
Mail Code 1900L
Washington, D.C. 20460

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RE: In the Matter of Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist
Docket No. RCRA-05-2011-0009

Dear Chief Judge Biro:

Please find enclosed a copy of Complainant's Reply to Respondents' Response to Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion, filed on February 3, 2012, in the above-captioned matter.

Sincerely yours,

J. Matthew Moore
Assistant Regional Counsel

Enclosures

cc: Keven D. Eiber (w/ enclosures)
Lawrence M. Falbe (w/ enclosures)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

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

Docket No. RCRA-05-2011-0009

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**COMPLAINANT'S REPLY TO RESPONDENTS' RESPONSE TO COMPLAINANT'S
MOTION FOR AN ADMINISTRATIVE SUBPOENA TO ISSUE FOR THE
DEPOSITION OF A THIRD-PARTY WITNESS, AND FOR A REVISED RESPONSE
DATE FOR THE MOTION**

In accordance with Sections 22.16(a) and (b) 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(a) and (b), Complainant offers this Reply to Respondents' Response to Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion.

EPA's motive in filing Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion ("Complainant's Motion") is simple. At the time Complainant's Motion was filed, there was no effective administrative subpoena in place for the deposition of Mr. Donald DuRivage, the Environmental Health and Safety Manager of International Flavors and Fragrances, Inc.'s ("IFF's") Augusta facility during the time that the decisions to market Unitene materials were made. There was also no motion to reissue the DuRivage subpoena pending. EPA was

particularly concerned about ensuring a subpoena would be issued due to the cooperative nature of Respondents' relationship with IFF. EPA has previously noted that Respondents' and IFF's interests are aligned. If the Unitene material generated by IFF is declared a hazardous waste by this Court, both companies are potentially subject to significant civil penalties for various violations of RCRA regulations. Realizing their common interest, Respondents and IFF have motive to work together to avoid RCRA jurisdiction. *See* CX56 and CX57.

In consideration of this potential cooperative relationship and the EPA communications with counsel for IFF (Mara Levin) the steps EPA has taken to assure that Mr. DuRivage's deposition takes place under appropriate circumstances (for example, as the U.S. Attorney's Office in Columbia, South Carolina) are warranted. As demonstrated in Exhibit B to Complainant's Motion, counsel for IFF has misleadingly indicated that Mr. DuRivage's testimony should be of no significance to the current enforcement action. However, documents submitted by IFF in each of its responses to EPA's Requests for Information, as well as the testimony of IFF's witnesses on January 31 and February 1, 2012, demonstrated the opposite. Wary that Mr. DuRivage may not be presented for deposition, EPA filed its Motion. Appreciating the potential significance of Mr. DuRivage's testimony, EPA's objective was to assure that his deposition occurred, regardless of Respondents' intentions.

For all of the reasons set forth above, EPA respectfully requests that this Court grant the Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for The Motion.

Respectfully submitted,

Counsel for EPA:



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J. Matthew Moore, Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604
PH (312) 886-5932
Email: moore.matthew@epa.gov

Catherine Garypie, Associate Regional Counsel
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604
PH (312) 886-5825
Email: garypie.catherine@epa.gov

Jeffrey A. Cahn, Associate Regional Counsel
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604
PH (312) 886-6670
Email: cahn.jeff@epa.gov

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Docket No. RCRA-05-2011-0009

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CERTIFICATE OF SERVICE

I certify that the foregoing "Complainant's Reply to Respondents' Response to Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion" dated February 3, 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 UPS Overnight Mail to:

Attorneys for Respondents:

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

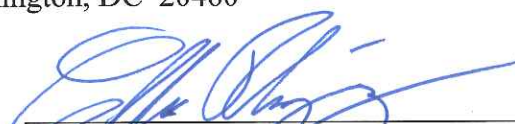
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, DC 20460

2/3/12

Date



Charles Rodriguez, Student Aide