



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

CORRECTED ORDER ISSUING SUBPOENAS

On May 24, 2012, Complainant filed a Motion for Issuance of Subpoenas ("Motion" or "Mot.") requesting the issuance of subpoenas for two non-party witnesses (Thomas Guido and David Shepherd) and two party witnesses (Respondent Scott Forster and Respondent Eric Lofquist) to appear and testify at the hearing in this matter, which is scheduled to commence on June 18, 2012. In its Motion, Complainant states that the identified witnesses "are opposing-party or third-party witnesses that may be reluctant to testify without the issuance of a subpoena." Mot. at 2. Pursuant to Rule 22.21(b), 40 C.F.R. § 22.21(b), Complainant then sets forth in substantial detail the asserted materiality and relevancy of the evidence to be adduced. Mot. at 2-4. Complainant requests that Respondents Forster and Lofquist be directed to appear in person on June 20, 2012. Complainant requests that Messrs. Guido and Shepherd be directed to appear in person on June 19, 2012. *See* Draft Subpoenas Attached to Motion.

On May 30, 2012, Respondent filed a Response to Complainant's Motion for Issuance of Subpoenas ("Response" or "Resp."). Respondents have stated in communication with the undersigned's staff attorney, that they do not oppose the Motion with respect to Messrs. Guido and Shepherd. However, Respondents object to the issuance of a subpoena that requires the attendance and testimony of Mr. Lofquist on June 20, 2012. Respondents state that Complainant was advised on several occasions that Mr. Lofquist would be unable to attend the hearing on June 20, 2012, but was otherwise available. Respondents state further that they represented to Complainant that both individual Respondents would be made available, without the need for a subpoena, except for Mr. Lofquist on that one date. Resp. at 1-2. Respondents argue that the subpoena for Mr. Lofquist that requires his attendance specifically on June 20, 2012, is unreasonable and unduly burdensome. Respondents represent that 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 and that it is not feasible to reschedule these meetings. Resp. at 2. Respondents affirmatively state that Mr. Lofquist would be available to testify on June 18th, 19th, or after June 20, 2012.

Subpoenas have already been issued for Messrs. Guido and Shepherd for Respondents' case-in-chief. Here, I find again that the requirements the requirements of Rule 22.21(b) have been met with respect to those witnesses, and, thus, that unopposed part of the Motion is **GRANTED**.¹ However, Complainant has not established that subpoenas are necessary for Respondents Lofquist and Forster, particularly in light of Respondents assertion that they have repeatedly offered to make these individuals available for examination during the course of the hearing. Nor has Complainant established why Respondent Lofquist should be compelled to attend the hearing and give testimony on the one day, in the course of a two-and-a half-week hearing, that Complainant already knows him to be unavailable. Given that Complainant has already stated an intent to present its case over the course of four days (June 18-21), I find no undue prejudice to Complainant if it must call Mr. Lofquist one day earlier or later than June 20, 2012, and some latitude will be granted Complainant to insert Respondent Lofquist's testimony out of order as necessary. Accordingly, the request for a subpoena for Respondents Forster and Lofquist is **DENIED**. Respondents, however, are expected to make these individuals available to testify at Complainant's request, with the exception of Mr. Lofquist on June 20, 2012.

Original subpoenas, which accompany this Order, will be sent to Catherine Garypie, designated counsel for Complainant, for proper service in accordance with 40 C.F.R. § 22.5(b)(1)(i).

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

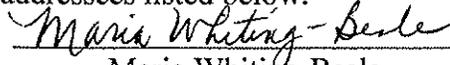
Dated: May 31, 2012
Washington, D.C.

¹ The granting of the Motion does not establish the admissibility of any of the testimony contemplated in the Motion. Specific testimony may be excluded upon a properly supported objection by an opposing party at hearing.

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 **Corrected Order Issuing Subpoenas**, dated May 31, 2012, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: May 31, 2012

Original and One Copy By Regular To:

La Dawn Whitehead
Regional Hearing Clerk
U.S. EPA
77 West Jackson Boulevard, E-19J
Chicago, IL 60604-3590

Copy By Regular Mail And E-Mail To:

Catherine Garypie, Esquire
Associate Regional Counsel
J. Matthew Moore, Esquire
Assistant Regional Counsel
Jeffrey A. Cahn, Esquire
Associate Regional Counsel
U.S. EPA
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

Keven D. Eiber, Esquire
Meagan L. DeJohn, Attorney
Brouse McDowell
600 Superior Avenue, East, Suite 1600
Cleveland, OH 44114-2603

Lawrence W. Falbe, Esquire
Quarles & Brady LLP
300 N. LaSalle Street, Suite 4000
Chicago, IL 60654