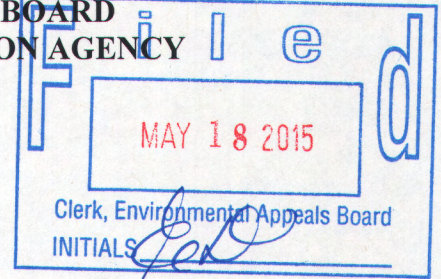


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



_____)
In re:)
)
Carbon Injection Systems, LLC,)
Scott Forster, and Eric Lofquist)
)
Docket No. RCRA-05-2011-0009)
)
_____)

RCRA Appeal No. 15-01

ORDER ELECTING TO EXERCISE SUA SPONTE REVIEW

On March 17, 2015, Chief Administrative Law Judge Biro (“ALJ”) issued an Initial Decision dismissing an action for civil penalties brought by the U.S. Environmental Protection Agency’s Region 5 (“Region 5”) against Carbon Injection Systems, Scott Forster, and Eric Lofquist (“Carbon Injection Systems”). Region 5 charged that Carbon Injection Systems had stored and treated waste in violation of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, and the Ohio Administrative Code, and sought nearly \$2 million in penalties. The ALJ held that Carbon Injection Systems was not liable based on her conclusion that Region 5 had not sustained its burden of showing that the material stored and treated by Carbon Injection Systems was a “waste” under applicable law. Init. Dec. at 91.

Region 5 filed a motion requesting an extension of the time period for filing an appeal of the ALJ’s Initial Decision with the Board. By order, the Board granted an extension until May 12, 2015, for the Region to file an appeal, and extended until May 27, 2015, the time period for

the Board to determine whether *sua sponte* review of the Initial Decision is warranted.¹

The Region did not file an appeal with the Board. Upon examination of the Initial Decision, the Board has decided to exercise *sua sponte* review, pursuant to 40 C.F.R. §§ 22.27(c)(4), .30(b). Accordingly, this order constitutes notice, required under 40 C.F.R. § 22.30(b), of the Board's intent to review the Initial Decision.

We do not require briefing from the parties at this time. If the Board decides briefing and/or oral argument is appropriate, we will issue a subsequent order.

So ordered.²

Dated:

May 18, 2015

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein for Leslye M. Fraser
Leslye M. Fraser
Environmental Appeals Board

¹ Under 40 C.F.R. § 22.30(b), the Board has 45 days from the date an initial decision is served on the parties to file notice of the intent to exercise *sua sponte* review. Because the time for a party to appeal is 30 days from the date of service, the 45-day period provides the Board with an additional 15 days to make a determination on *sua sponte* review if the losing party decides not to appeal. The Board extended the Region's time to file an appeal beyond the Board's initial 45-day deadline to exercise *sua sponte* review. As a result, the Board extended its time to determine whether to exercise *sua sponte* review until 15 days after the Region's new date to file an appeal.

² The two-member panel deciding this matter consists of Environmental Appeals Judges Leslye M. Fraser and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Electing To Exercise Sua Sponte Review** in the matter of Carbon Injection Systems, LLC, Scott Forster, and Eric Lofquist, RCRA Appeal No. 15-01, were sent to the following persons in the manner indicated:

By U.S. First Class Mail:

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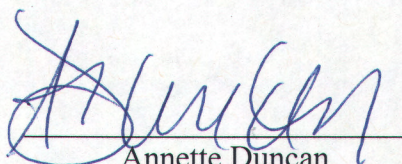
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Dated:

MAY 18 2015


Annette Duncan
Secretary