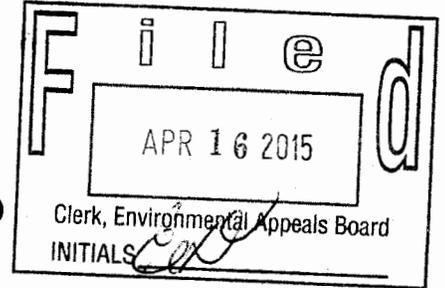


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC**



\_\_\_\_\_)  
In re: )  
Carbon Injection Systems, LLC, ) RCRA Appeal No. 15-(01)  
Scott Forster, and Eric Lofquist )  
\_\_\_\_\_)  
Docket No. RCRA-05-2011-0009 )  
\_\_\_\_\_)

**ORDER DENYING IN PART AND GRANTING IN PART MOTION  
FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW**

By motion filed with the Environmental Appeals Board on April 9, 2015, the U.S. Environmental Protection Agency, Region 5, seeks an extension of time in which to file its petition for review of the Initial Decision issued in the above-captioned matter. The Region states in its motion that without an extension of time, its petition would be due on April 22, 2015. The Region seeks to extend this deadline to May 22, 2015, 45 days after it obtained a public, non-confidential version of the Initial Decision. For the following reasons, the Region's motion is denied in part and granted in part.

The above-captioned matter is an enforcement action initiated under 40 C.F.R. part 22. Pursuant to section 22.30(a), any party may appeal an initial decision to the Environmental Appeals Board ("Board") by filing a notice of appeal and an accompanying appellate brief within thirty days after *service* of the initial decision. "Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document." 40 C.F.R. § 22.7(c).

The presiding officer issued the Initial Decision in this case on March 17, 2015. Motion

at 1. This version of the Initial Decision included a watermark stating “CONFIDENTIAL - CBI PROTECTED” and potentially contained confidential business information. Motion at 1. The presiding officer concurrently issued a separate order informing the parties that “[t]he filing of any motion requesting redaction does not effect [sic] the finality of the [Initial Decision] or the deadlines for appeal therefrom.” Order Regarding Redactions From Initial Decision on the Basis of CBI (ALJ Mar. 17, 2015).

Although the Region states that the Initial Decision was served via certified mail, return receipt, the Region does not indicate the date of service. Motion at 2. Rather, the Region indicates that it received the Initial Decision by e-mail on March 17, 2015, and received the hard copy sent by certified mail, return receipt, on March 23, 2015.<sup>1</sup> Motion at 2. The Board presumes that the presiding officer effectuated service by certified mail, return receipt, on March 17, 2015. Based on this service date, the filing deadline for a notice of appeal and appeal brief in this matter is April 21, 2015, and not April 22, 2015, as stated in the Region’s motion.

In support of its motion, the Region states that the issues in this matter involve potentially-nationally significant issues and that the requested extension will accommodate the Region’s delayed internal distribution of the Initial Decision due to the document possibly containing confidential business information. Motion at 3. In particular, the Region states that its case team did not obtain a public, non-confidential version of the Initial Decision until April 6, 2015. Motion at 3. The Region obtained this version of the Initial Decision from the

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<sup>1</sup> The e-mail transmission of the Initial Decision did not constitute service. *See* Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Office of Administrative Law Judges 1 (ALJ Dec. 17, 2013) (excluding from e-mail service “the complaint, rulings, orders and decisions”).

Office of Administrative Law Judges' website, and the parties were not served a public, non-confidential version of the Initial Decision. Additional reasons the Region seeks the extension are that the case is complex, the lead EPA attorney handling the case has a long-scheduled vacation from April 10 to 18, 2005, and since the 2012 hearing in this matter, one of the three EPA attorneys handling the case has separated from EPA. Motion at 4.

The Region indicates that Respondents, Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist, object to the requested extension but are amenable to an appeal deadline thirty days after EPA states it received a public version of the Initial Decision: May 6, 2015. Motion at 4-5.

In appropriate cases, the Board may grant extensions of filing deadlines. 40 C.F.R. § 22.7(b) (authorizing extensions of time upon timely motion, for good cause shown, after consideration of prejudice to other parties, or upon the Board's own initiative); *see also Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) ("It is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.") (quoting *NRLB v. Monsanto Chem. Co.*, 205 F.2d 763, 764 (8th Cir. 1953)). In this case, the Region has demonstrated good cause for warranting a filing extension. Although the Region has stated that Respondents object to the requested extension, to date, no written objection has been filed. In particular, Respondents have not explained the prejudice to it of a later deadline for the Region to file an appeal brief. Nevertheless, the Board recognizes Respondents' general interest in bringing finality to this case.

Accordingly, having considered the prejudice to Respondents and recognizing the Region's good cause for the extension request, the Board extends the Region's filing deadline by 21 days. In the event that the Region wishes to appeal the Initial Decision underlying this proceeding, it shall file a notice of appeal and appeal brief with the Clerk of the Board no later than **May 12, 2015**.<sup>2</sup>

So ordered.

Dated *April 16, 2015*

ENVIRONMENTAL APPEALS BOARD

By: *Leslye M. Fraser*  
Leslye M. Fraser  
Environmental Appeals Judge

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<sup>2</sup> This order extends the Region's appeal deadline beyond the 45-day period within which the Board would ordinarily determine, under 40 C.F.R. § 22.30(b), whether to undertake sua sponte review of an unappealed Initial Decision. Normally, because the time for a party to file an appeal is 30 days from the date of service of the Initial Decision, the Board has 15 additional days to make its determination respecting sua sponte review. To preserve this interval in this case, the Board will defer any consideration of sua sponte review until after the Region's revised deadline for filing an appeal expires on May 12, 2015. See 40 C.F.R. § 22.1(c) (when a procedural issue arises that is not explicitly addressed in the Consolidated Rules of Practice at 40 C.F.R. part 22, the Board has discretion to resolve the issue as it deems appropriate). As a result, the Initial Decision shall be regarded as the final order of the Environmental Appeals Board pursuant to 40 C.F.R. § 22.27(c) only if: (1) no appeal brief is filed by the Region on or before May 12, 2015, and (2) the Board does not elect to review the Initial Decision sua sponte on or before May 27, 2015 (the 15th day after the Region's revised deadline for filing an appeal).

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Denying in Part and Granting in Part Motion For Extension of Time to File Petition for Review** in *In re Carbon Injection Systems, LLC, Scott Forster, and Eric Lofquist*, RCRA Appeal No. 15-(01), were sent to the following persons in the manner indicated:

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Date:

APR 16 2015



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Annette Duncan  
Secretary