



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
C-14J

April 12, 2012

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

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U.S. EPA REGION 5
2012 APR 12 PM 3:04

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 First Amended Complaint and Compliance Order, filed on April 12, 2012, in the above-captioned matter. Please note that this amended complaint contains the following changes:

- a. new paragraph 5
- b. new paragraph 11
- c. new penalty figure of "\$1,791,810" in paragraph 97
- d. the following changes to Attachment A:
 - Count 1: line 11 (changed to "\$343,698"); line 12: changed to "\$1,239,873"
 - Count 4: line 3: (changed to "...minus 1 (14 events-1)...\$47,450"); line 10 (changed to "\$3,548"); line 12 (changed to "\$74,498")
 - Count 8: line 11 (changed to "\$51,664"); line 12 (changed to "\$441,004")
 - [The totals on the top of each page for counts 1, 4 and 8 as well as the Grand Total were changed as well. Count 10 was not changed]

Most of these changes were part of Complainant's Motion for Leave to Amend Complaint. However, this First Amended Complaint and Compliance Order also contains several ministerial changes as well. Respondents do not object to any of the changes reflected in

this document. The changes in this document do not affect arguments made in the pending motions for accelerated decision in this matter.

Sincerely yours,



Catherine Garypie
Associate Regional Counsel

Enclosure

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

2012 APR 12 PM 3:00
REGINA, SASKATCHEWAN
COMMUNICATIONS
DIVISION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
APR 12 2012

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.)
_____)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket No. RCRA-05-2011-0009

Proceeding to Assess a Civil Penalty

Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

First Amended Complaint and Compliance Order

Preliminary Statement

1. This is an administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

5. Respondents are Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist. Carbon Injection Systems LLC, is a limited liability company doing business in the State of Ohio. Hereinafter the term Respondents is used both collectively and alternatively to refer to all or any one of the three persons named above.

Statutory and Regulatory Background

6. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

8. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989). U.S. EPA has granted authorization for several changes to the Ohio RCRA program since 1989. 56 Fed. Reg. 14203 (April 8, 1991); 60 Fed. Reg. 38502 (July 27, 1995); 61 Fed. Reg. 54950 (October 23, 1996); 68 Fed. Reg. 3429 (January 24, 2003); 71 Fed. Reg. 3220 (January 20, 2006), and; 72 Fed. Reg. 61063 (October 29, 2007). Recently, relevant sections of the Ohio Administrative Code were revised, effective September 10, 2010, but U.S. EPA has not yet granted authorization for those changes to the Ohio RCRA program.

9. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

10. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

General Allegations

11. Respondent Carbon Injection Systems LLC operated a facility located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio (the "Facility") from May 2005 to March 2010 pursuant to the terms of a lease with WCI Steel, Inc. Equipment at the Facility was leased starting March 1, 2010 by Respondent Carbon Injection Systems LLC to Main Street Commodities LLC, and sold on December 31, 2010 by Respondent Carbon Injection Systems LLC to Main Street Commodities LLC. Main Street Commodities LLC, a limited liability company associated with Respondents Scott Forster and Eric Lofquist, now operates the Facility.

12. Respondent Scott Forster, President, operated the Facility from May 2005 to March 2010.

13. Respondent Eric Lofquist, Vice President, operated the Facility from May 2005 to

March 2010.

14. Respondents were and are “persons” as defined by OAC 3745-50-10(A)(88), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

15. During the relevant time period, Respondents were “owners” or “operators,” as those terms are defined under OAC 3745-50-10(A)(83) and (84) [40 C.F.R. § 260.10], of a facility located at Gate #4, Blast Furnace, Main Avenue, Warren, Ohio.

16. Respondents owned or operated the Facility from at least May 2005 to March 2010.

17. Activities conducted by Respondents at the Facility include blending used oil streams; blending used oil with virgin fuel products; blending used oil to meet fuel specifications; and marketing on-specification used oil fuel to a consumer.

18. On or about February 25, 2005, Respondent Carbon Injection System, LLC, notified the Ohio Environmental Protection Agency (“OEPA”) of its status as a used oil processor and a marketer pursuant to OAC 3745-279-51 [40 C.F.R. § 279.42].

19. At all times relevant to this Complaint, Respondents’ Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating and storing hazardous waste.

20. Respondents’ Facility was a “facility,” as that term is defined under OAC 3745-50-10(A)(39) [40 C.F.R. § 260.10].

21. At all times relevant to this Complaint, Respondents held K022, D001, D035, F003 and F005, discarded materials, in 18,000-20,000 gallon tanks before the material was transferred from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

22. Respondents stored, transported, disposed of, or otherwise handled K022, D001, D035, F003 and F005 in “tanks” as that term is defined under OAC 3745-50-10(A)(114) [40 C.F.R. § 260.10].

23. At all times relevant to this Complaint, Respondents’ K022, D001, D035, F003 and F005 was a “solid waste” as that term is defined under OAC 3745-50-10(A)(107) [40 C.F.R. § 261.2].

24. At all times relevant to this Complaint, Respondents’ K022, D001, D035, F003 and F005 was a “hazardous waste” as that term is defined under OAC 3745-50-10(A)(48) [40 C.F.R. § 261.3].

25. At all times relevant to this Complaint, Respondents’ holding of K022, D001, D035, F003 and F005 in tanks constituted hazardous waste “storage,” as that term is defined under OAC 3745-50-10(A)(111) [40 C.F.R. § 260.10].

26. Respondents managed hazardous waste at the Facility after November 19, 1980.

27. On August 27, 2008, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

28. At all times relevant to this Complaint Respondents obtained used oils, K022, D001, D035, F003 and F005, and other materials which were unloaded into storage tanks for sequencing into the Respondents’ day tank. The Respondents’ day tank fed the blast furnace at RG Steel LLC. (formerly known as Severstal Warren, Inc., Warren Consolidated Industries, Inc., and as WCI Steel, Inc.), where energy was recovered from the materials sent by Respondents.

29. Respondents stored and treated hazardous waste (K022) at the Facility on or about November 21, 2005.

30. Respondents stored and treated hazardous waste designated (D001) on or about 40 occasions between August 9, 2006 and February 27, 2009.

31. Respondents stored and treated hazardous waste (D001, D035, F003 and F005) on or about 149 occasions between November 16, 2006 and February 10, 2009.

32. On February 8, 2008, U.S. EPA issued a Notice of Violation to Respondent Carbon Injection Systems LLC, alleging certain violations of RCRA.

33. On February 8, 2008, U.S. EPA issued a RCRA Information Request to Respondent Carbon Injection Systems LLC.

34. On March 27, 2008, Respondent Carbon Injection Systems LLC submitted a first response to the U.S. EPA RCRA Information Request.

35. On April 28, 2008, Respondent Carbon Injection Systems LLC submitted a second response to the U.S. EPA RCRA Information Request.

36. On April 28, 2008, Respondent Carbon Injection Systems LLC, submitted to U.S. EPA a written response to the Notice of Violation.

37. On April 28, 2010, U.S. EPA issued a second RCRA Information Request to Respondent Carbon Injection Systems LLC.

38. On June 15, 2010, Respondent Carbon Injection Systems LLC, submitted a response to the U.S. EPA second RCRA Information Request.

39. On August 31, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Respondent Carbon Injection Systems LLC.

40. On September 21, 2010, Respondent Carbon Injection Systems LLC submitted a response to the August 31, 2010, Notice of Intent to File Administrative Complaint, and asserted an inability to pay the penalty proposed in U.S. EPA's Notice of Intent to File Administrative

Complaint. Although the inability to pay defense is an affirmative defense, U.S. EPA requested and received additional information regarding the ability to pay of Respondent Carbon Injection System LLC.

41. Respondent Carbon Injection System LLC has the ability pay a portion of the proposed penalty.

42. On October 26, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Respondent Scott Forster. Respondent Scott Forster has asserted an inability to pay the penalty proposed in U.S. EPA's Notice of Intent to File Administrative Complaint. Although the inability to pay defense is an affirmative defense, U.S. EPA has requested information regarding the alleged inability to pay of Respondent Scott Forster.

43. U.S. EPA has received some but not all of the requested information. EPA has been unable to complete an ability to pay analysis for Respondent Scott Forster. Without further documentation, EPA has no basis to conclude that Respondent Scott Forster can meet his burden under the inability to pay affirmative defense.

44. On November 9, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Respondent Eric Lofquist. Respondent Eric Lofquist has asserted an inability to pay the penalty proposed in U.S. EPA's Notice of Intent to File Administrative Complaint. Although the inability to pay defense is an affirmative defense, U.S. EPA has requested information regarding the alleged inability to pay of Respondent Eric Lofquist.

45. U.S. EPA has received some but not all of the requested information. EPA has been unable to complete an ability to pay analysis for Respondent Eric Lofquist. Without further documentation, EPA has no basis to conclude that Respondent Eric Lofquist can meet his burden under the inability to pay affirmative defense.

46. Based on the ability to pay information submitted to EPA as of the date of this complaint, all three Respondents have the combined ability to pay the proposed penalty.

47. On February 8, 2011, U.S. EPA and all three Respondents met for a pre-filing conference.

48. At all times relevant to this Complaint, the State of Ohio had not issued a permit to Respondents to treat, store, or dispose of hazardous waste at their Facility.

Count 1: Storage and Treatment of Hazardous Waste Without a Permit or Interim Status

49. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

50. Respondents did not apply for or obtain a permit during the time they owned or operated the Facility.

51. Pursuant to OAC 3745-50-40(A)(1) [40 CFR § 270.10(f)(1)], no person shall begin physical construction of a new hazardous waste facility without having submitted "Part A" and "Part B" of a permit application to the director of the Ohio EPA and having received an effective Ohio hazardous waste facility installation and operation permit. Pursuant to 3005 (a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e); Ohio Revised Code §§ 3734.02 and 3734.05 ("ORC"); and OAC § 3745-50-45; the owner and operator of a hazardous waste management unit is prohibited from operating a hazardous waste management unit except in accordance with a permit issued pursuant to RCRA.

52. Respondents built and operated a hazardous waste facility where storage and treatment of hazardous waste without a permit occurred, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at OAC 3745-50-40 to 3745-50-66; 3745-54 to

3745-57; 3745-205 and 3745-256 [40 C.F.R. Parts 264 , 40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

53. Respondents' storage and treatment of hazardous waste without a permit violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of OAC §§ 3745-50-40 to 3745-50-66 [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d), and 270.13].

Count 2: Public Meeting

54. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

55. Pursuant to OAC § 3745-50-39(A)(2) [40 C.F.R. § 124.31(b)] prior to the submittal of a "Part B" permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

56. Pursuant to OAC § 3745-50-40(A)(2)(a) [40 C.F.R. § 124.31(b)] prior to the submittal of a complete application for a hazardous waste facility installation and operation permit, the applicant must hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is geographically closer to the proposed location of the facility. The meeting must be open to the public and must be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities. The applicant must provide to the director evidence of the meeting and document community questions concerning the proposed activities.

57. Respondents failed to hold a public meeting in violation of OAC §§ 3745-50-39(A)(2), 3745-50-40(A)(2)(a) [40 C.F.R. § 124.31(b)].

Count 3: Waste Analysis

58. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

59. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents had a Used Oil Analysis Plan. The Used Oil Analysis Plan did not contain information regarding the treatment, storage or disposal of hazardous waste or procedures to determine the identity of each movement of waste managed at the facility.

60. Pursuant to OAC § 3745-54-13(B) [40 C.F.R. § 264.13(b)], the owner or operator must develop and follow a written waste analysis plan which describes the procedures to be implemented in order to comply with paragraph (A) of this rule. He must keep this plan at the facility. At a minimum, the plan must specify: (1) the parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters; (2) the test methods which will be used to test for these parameters; (3) the sampling method which will be used to obtain a representative sample of the waste to be analyzed; (4) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; (5) for off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and (6) The methods which will be used to meet the additional waste analysis requirements for specific waste management methods of OAC 3745-270-07.

61. Pursuant to OAC § 3745-54-13(C) [40 C.F.R. § 264.13(c)] the waste analysis plan must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity

of the waste designated on the accompanying manifest or shipping paper. The plan must describe the procedures which will be used to determine the identity of each movement of waste managed at the facility.

62. Respondents did not develop and follow a sufficient written waste analysis plan from May 2005 to March 2010, in violation of OAC § 3745-54-13(B) and (C) [40 C.F.R. § 264.13(b) and (c)].

Count 4: Personnel Training

63. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

64. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents required some classroom instruction and/or or on-the-job training by facility personnel regarding Respondents' Used Oil Analysis Plan (in February 2006) and Contingency Plan (in February and March 2006), but these plans did not include information regarding teaching facility personnel to perform their duties in a way that ensured the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities.

65. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents maintained records related to classroom instruction and/or or on-the-job training by facility personnel regarding Respondents' Used Oil Analysis Plan (dated February 2006) and Contingency Plan (dated February and March 2006), but the records did not include information regarding teaching facility personnel to perform their duties in a way that ensured the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities.

66. Pursuant to OAC § 3745-54-16(A)(1) [40 CFR § 264.16(a)(1)] facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities. Pursuant to OAC 3745-54-16(D) [40 CFR § 264.16(d)], the owner or operator of the facility must maintain documents and records related to this training.

67. From May 2005 to March 2010, Respondents' facility personnel failed to successfully complete a program of classroom instruction or on-the-job training that taught them to perform their duties in a way that ensured the facility's compliance with the requirements of the standards for owners and operators of hazardous waste, treatment, storage and disposal facilities, in violation of OAC § 3745-54-16(A)(1) [40 CFR § 264.16(a)(1)]. In addition, Respondents failed to maintain documents and records related to this training, in violation of OAC § 3745-54-16(D) [40 CFR § 264.16(d)].

Count 5: Preparedness and Prevention

68. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

69. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not attempt to make: (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire

department and agreements with any others to provide support to the primary emergency authority; (3) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

70. Pursuant to OAC § 3745-54-37(A) [40 C.F.R. § 264.37(a)] Respondents were responsible to attempt to make: (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority; (3) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

71. Respondents failed to attempt to make: (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire

department and agreements with any others to provide support to the primary emergency authority; (3) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (4) arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility, in violation of OAC § 3745-54-37(A) [40 C.F.R. § 264.37(a)].

Count 6: Unmanifested Waste Report

72. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

73. Respondents accepted hazardous waste (K022) at the Facility for storage on November 21, 2005, without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the waste.

74. Respondents accepted hazardous waste (D001) at the Facility for storage on forty (40) occasions between August 9, 2006 and February 27, 2009, without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the waste.

75. Respondents accepted hazardous waste (D001, D035, F003 and F005) at the Facility for storage on one hundred forty nine (149) occasions between November 16, 2006 and February 10, 2009, without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director within fifteen days after receiving the waste.

76. OAC §3745-54-76 [40 CFR § 264.76] requires that if a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, then the owner or operator must prepare and submit an unmanifested waste report in the form of a letter to the director of the OEPA in the case of the federal regulations, the Regional Administrator of U.S. EPA) within fifteen days after receiving the waste.

77. Respondents violated OAC § 3745-54-76 [40 CFR § 264.76] by accepting hazardous waste (K022) on November 21, 2005, hazardous waste (D001) at the Facility for treatment and storage on forty (40) occasions between August 9, 2006 and February 27, 2009, and hazardous waste (D001, D035, F003 and F005) on one hundred forty nine (149) occasions between November 16, 2006 and February 10, 2009 without an accompanying manifest and failed to prepare and submit an unmanifested waste report in the form of a letter to the director of OEPA within fifteen days after receiving the waste.

Count 7: Closure

78. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

79. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life.

80. Pursuant to OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-120], the owner and operator of a hazardous waste management unit is required to have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life.

81. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents failed to have a written closure plan that identifies the steps necessary to perform partial or final closure of the facility at any point during its active life, in violation of OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-120].

Count 8: Financial Assurance for Closure

82. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

83. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units.

84. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not establish financial assurance for closure of the facility in the form of a closure trust fund, surety bond, letter of credit, closure insurance, or financial test and corporate guarantee.

85. Pursuant to OAC § 3745-55-40 [40 C.F.R. § 264.140], the owner and/or operator of a hazardous waste management facility is required to have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units in accordance with the applicable provisions of OAC § 3745-55-42 [40 C.F.R. § 264.142]. In addition, the owner and/or operator of a hazardous waste management unit is required to comply with the financial assurance provisions of OAC § 3745-55-43 [40 C.F.R. § 264.143].

86. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents failed to have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units, in violation of OAC 3745-55-42 [40

C.F.R. § 264.142], and Respondents failed to comply with applicable financial assurance requirements, in violation of OAC § 3745-55-43 [40 C.F.R. § 264.143].

Count 9: Tank System Requirements

87. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

88. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents did not meet hazardous waste tanks requirements of OAC § 3745-55-92 [40 C.F.R. § 264.192].

89. Pursuant to OAC § 3745-55-92 [40 C.F.R. § 264.192], the owner and/or operator of a hazardous waste management facility is required to obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer attesting that the tank system was adequately designed and that the tank system had sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it would not collapse, rupture, or fail. In addition, this assessment should have considered, at a minimum, the following information: (1) design standard(s) according to which tank(s) and/or the ancillary equipment were constructed; and (2) hazardous characteristics of the waste(s) that were to be handled; (3) existing corrosion protection measures; (4) documented age of the tank system; and (5) results of a leak test, internal inspection, or other tank integrity examination.

90. When Respondents owned or operated the Facility from May 2005 to March 2010, Respondents failed to obtain and keep on file at the facility a written hazardous waste tank assessment, in violation of OAC § 3745-55-92 [40 C.F.R. § 264.192].

Count 10: Land Disposal Requirements

91. Complainant incorporates paragraphs 1 through 48 of this Complaint as though set forth in this paragraph.

92. Pursuant to OAC § 3745-270-07(B)(5) [40 C.F.R. § 268.7(b)(5)] if a treatment facility's waste will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste off-site must comply with the notice and certification requirements applicable to generators.

93. Pursuant to OAC § 3745-270-07(A)(1) [40 C.F.R. § 268.7(a)(1)] a generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards of OAC §§ 3745-270-40, 3745-270-45, or 3745-270-49 [40 C.F.R. §§ 268.45, 268.45 or 268.49].

94. Pursuant to OAC § 3745-270-07(A)(2-4) [40 C.F.R. § 268.7(a)(2-4)] with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the generator's files.

95. Respondents failed to determine and provide land disposal notification and certification pursuant to the land disposal requirements of OAC § 3745-270-07 [40 C.F.R. § 268.7].

96. The acts or omissions referred to in the preceding paragraphs constitute violations of RCRA and/or of the federally approved hazardous waste management program for the State of Ohio.

Civil Penalty

97. Complainant proposes that the Administrator assess a civil penalty of \$1,791, 810 against Respondents for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheets."

98. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider the seriousness of the violation and any good faith efforts to comply with applicable requirements. *See* Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

Compliance Order

99. Based on the foregoing, Respondents are hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a) [40 C.F.R. § 22.37(b)] to comply with the following requirements immediately upon the effective date of this Order:

- a. Respondents shall comply with all applicable closure and post-closure requirements in OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-120] to the extent practicable given the current owner and operator of the Facility.
- b. If all applicable closure and post-closure requirements in OAC §§ 3745-55-10 through 3745-55-20 [40 C.F.R. §§ 264.110-120] are complied with by Respondents, as directed in paragraph 94.a, above, Respondents shall comply with all applicable financial assurance requirements for closure in OAC 3745-55-42 [40 C.F.R. § 264.142], and OAC § 3745-55-43 [40 C.F.R. § 264.143].

100. Respondents shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 96 of this Order

101. Respondents shall achieve and maintain compliance with all required prohibitions governing the storage, treatment and disposal of hazardous waste applicable to treatment, storage or disposal facilities, codified at or incorporated by OAC § 3745-54-01 to 101, OAC § 3745-55-10 to 99, OAC § 3745-56-20 to 56-83, OAC § 3745-57-02 to 93 and OAC § 3745-205-100 to 202 [40 C.F.R. Parts 264 and 265] by the effective date of this Order.

102. Respondents shall notify U.S. EPA in writing within 15 days of the effective date of this Order either certifying compliance with the Order or explaining why they are not in compliance and proposing a date to achieve compliance.

103. Respondents shall submit all reports, submissions, and notifications required by this Order to the United States Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Michael Beedle (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondents is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondents must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondents intend as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Catherine Garypie, Associate Regional Counsel to receive any Answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Catherine Garypie at (312) 886-5825. Her address is:

Catherine Garypie, Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondents contest any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondents may request a hearing before an Administrative Law Judge. To request a hearing, Respondents must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondents must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondents' written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondents have no knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondents' Answer must also state:

- a. the circumstances or arguments which Respondents allege constitute grounds of defense;
- b. the facts that Respondents dispute;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondents request a hearing.

If Respondents do not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondents must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

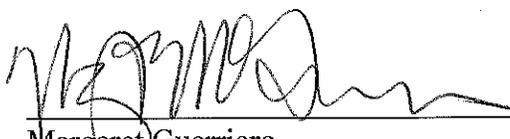
Whether or not Respondents request a hearing, Respondents may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondents may contact Michael Beedle at (312) 353-7922.

Respondents' request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondents may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondents' continuing obligation to comply with RCRA and any other applicable federal, state or local law.

April 11, 2012
Date



Margaret Guerriero
Director
Land and Chemicals Division

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GENERAL INVESTIGATIVE
DIVISION
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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 "First Amended Complaint and Compliance Order", dated April 12, 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 regular mail to:

Attorneys for Respondents:

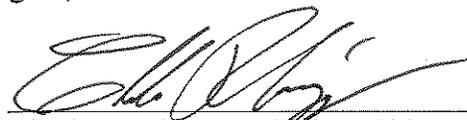
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

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

Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge
U.S. EPA Office of the Hearing Clerk
Mailcode 1900L
1200 Pennsylvania Avenue NW
Washington, DC 20460

4/12/12
Date



Charles Rodriguez, Student Aide

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