

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:) **Docket No. RCRA-05-2011-0009**
)
Carbon Injection Systems, LLC,)
Scott Forster,)
Eric Lofquist,)
)
Respondents.)
)

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COMPLAINANT'S MOTION FOR ISSUANCE OF SUBPOENAS

Comes now Complainant, the United States Environmental Protection Agency, Region 5 (Complainant), by and through its counsel, pursuant to Rules 22.16 and 22.21(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), Section 3008(b) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), and the April 10, 2012 Order on Agreed Motion for Modifying the Pre-Hearing Schedule, hereby files Complainant's Motion for Issuance of Subpoenas. 40 C.F.R. §§ 22.16 and 22.19, 42 U.S.C. § 6928(b).

I. Legal Standard

The Consolidated Rules, at Section 22.21(b), provide that the Presiding Judge: "may require the attendance of witnesses . . . by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced." Section 3008(b) of RCRA authorizes the issuance of subpoenas. 42 U.S.C. § 6928(b).

II. Witnesses

The witnesses identified below have been previously identified in Complainant's Initial Prehearing Exchange or Respondents' Initial Joint Prehearing Exchange.¹ With respect to the grounds and necessity for the requested subpoenas, the below identified witnesses are opposing – party or third-party witnesses that may be reluctant to testify without the issuance of a subpoena. The materiality and relevancy of each witness's testimony is discussed below.

1. Thomas Guido
c/o Mara Levin
Herrick, Feinstein, LLP
2 Park Avenue
New York, New York 10016

Mr. Guido currently serves as the Regional Operations Manager at the International Flavor and Fragrances, Inc. (IFF) Augusta, Georgia facility, which is the third-party generator of the waste at issue in the current proceeding. Through his current and formal roles with IFF, Mr. Guido's testimony can provide relevant and material information regarding the generation, handling, and characteristics of Unitene LE and Unitene AGR, as evidenced by his January 31, 2011 deposition in this matter. Such testimony is pertinent in determining that Unitene is a waste.

¹ In its Initial Prehearing Exchange, Complainant expressly reserved the right "to call any witnesses listed in Respondent's [sic] prehearing exchange." Complainant's Initial Prehearing Exchange at p. 8.

2. David Shepherd
c/o Mara Levin
Herrick, Feinstein, LLP
2 Park Avenue
New York, New York 10016

Mr. Shepherd currently serves as the Environmental Health and Safety Manager at the IFF Augusta, Georgia facility, which is the third-party generator of the waste at issue in the current proceeding. Through his current and formal roles with IFF, Mr. Shepherd's testimony can provide relevant and material information regarding the generation, handling, and characteristics of Unitene LE and Unitene AGR, as evidenced by his January 31, 2011 and February 1, 2011 deposition in this matter. Such testimony is pertinent in determining that Unitene is a waste.

3. Scott Forster
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Cleveland, Ohio 44114

Mr. Forster is a named Respondent in this matter and also the current President of Carbon Injection Systems LLC (CIS). Through his experience in this role, Mr. Forster can provide relevant and material testimony as to, the total scope of activities performed at CIS, his role in the day to day operation of the facility, his role in coordinating and accepting shipments of hazardous waste at CIS, and his role in persuading regulating entities and waste generators that activities at CIS were excluded from RCRA regulation. Such testimony is pertinent in determining that hazardous waste was managed at the CIS facility and deciding whether Mr. Forster is directly liable for the RCRA violations at CIS.

4. Eric Lofquist
c/o Keven D. Eiber

Brouse McDowell
600 Superior Avenue East
Cleveland, Ohio 44114

Mr. Lofquist is a named Respondent in this matter and also the current Vice President of CIS. Through his experience in this role, Mr. Lofquist can provide relevant and material evidence as to the total scope of activities performed at CIS, his role in the day to day operation of the facility, his role in coordinating and accepting shipments of hazardous waste at CIS, and his role in persuading regulating entities and waste generators that activities at CIS were excluded from RCRA regulation. Such testimony is pertinent in determining that hazardous waste was managed at the CIS facility and deciding whether Mr. Lofquist is directly liable for the RCRA violations at CIS.

III. Conclusion

Based on the foregoing explanation, Complainant's request for execution of subpoenas for the attendance and testimony of the above identified witnesses should be granted. If executed, Complainant will serve the subpoenas.

Respectfully Submitted,

Counsel for EPA:

5/24/12

Date


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

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Chicago, IL 60604
PH (312) 886-6670
Email: cahn.jeff@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:) **Docket No. RCRA-05-2011-0009**
)
Carbon Injection Systems, LLC,)
Scott Forster,)
Eric Lofquist,)
)
Respondents.)
)

SUBPOENA AD TESTIFICANDUM

TO: Thomas Guido
c/o Mara Levin
Herrick, Feinstein, LLP
2 Park Avenue
New York, New York 10016

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) 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(b), and Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATE AND TIMES: Tuesday, June 19, 2012, at 8:30am

PLACE: Courtroom 17A
Carl B. Stokes U.S. Court House
801 West Superior Avenue
Cleveland, Ohio

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON before the Administrative Law Judge at the above dates, time and place;

TO TESTIFY then and there under oath, and make truthful response to all lawful inquiries and questions put to you by the Parties to the proceedings; and

TO REMAIN IN ATTENDANCE until expressly excused by the Administrative Law Judge.

PURSUANT TO THE AUTHORITY OF Section 3008(b) 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(b), and Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COURT AS CONTEMPT THEREOF.

ISSUED in Washington, D.C., this ____ day of _____, ____.

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

Witness Fees and expenses in the same amounts as are paid to witnesses in the courts of the United States shall be paid by the party upon whose request the subpoena is issued.

This subpoena is to be served in accordance with Section 22.05(b)(1)(i) of the Consolidated Rules of Practice, 40 C.F.R. §22.05(b)(1)(i).

Person at whose request this Subpoena was issued:

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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IN THE MATTER OF:) **Docket No. RCRA-05-2011-0009**
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Scott Forster,)
Eric Lofquist,)
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Respondents.)
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SUBPOENA AD TESTIFICANDUM

TO: Scott Forster
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) 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(b), and Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATE AND TIMES: Wednesday, June 20, 2012, at 8:30am

PLACE: Courtroom 17A
Carl B. Stokes U.S. Court House
801 West Superior Avenue
Cleveland, Ohio

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON before the Administrative Law Judge at the above dates, time and place;

TO TESTIFY then and there under oath, and make truthful response to all lawful inquiries and questions put to you by the Parties to the proceedings; and

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

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IN THE MATTER OF:) Docket No. RCRA-05-2011-0009
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Carbon Injection Systems, LLC,)
Scott Forster,)
Eric Lofquist,)
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Respondents.)
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SUBPOENA AD TESTIFICANDUM

TO: David Shepherd
c/o Mara Levin
Herrick, Feinstein, LLP
2 Park Avenue
New York, New York 10016

YOU ARE HEREBY COMMANDED, pursuant to Section 3008(b) 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(b), and Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

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ISSUED in Washington, D.C., this ____ day of _____, ____.

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

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Eric Lofquist,)
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Respondents.)
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SUBPOENA AD TESTIFICANDUM

TO: Eric Lofquist
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

YOU ARE HEREBY COMMANDED, pursuant to Section _____ of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § _____, and Section 22.19(e)(4) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

DATE AND TIMES: Wednesday, June 20, 2012, at 9:00am

PLACE: Courtroom 17A
Carl B. Stokes U.S. Court House
801 West Superior Avenue
Cleveland, Ohio

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON before the Administrative Law Judge at the above dates, time and place;

TO TESTIFY then and there under oath, and make truthful response to all lawful inquiries and questions put to you by the Parties to the proceedings; and

TO REMAIN IN ATTENDANCE until expressly excused by the Administrative Law Judge.

PURSUANT TO THE AUTHORITY OF Section _____ of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § ____, and Section 22.19(e)(4) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COURT AS CONTEMPT THEREOF.

ISSUED in Washington, D.C., this ____ day of _____, ____.

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

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Person at whose request this Subpoena was issued:

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

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 "Complainant's Motion for the Issuance of Subpoenas", dated May 24, 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 overnight mail to:

Attorneys for Respondents:

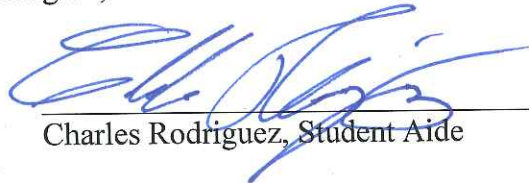
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

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
1099 14th St. NW
Suite 350, Franklin Court
Washington, DC 20005

5/24/12
Date


Charles Rodriguez, Student Aide

2012 MAY 24 PM 2:29

REGIONAL HEARING CLERK
U.S. EPA REGION 5