



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

RECEIVED MAY 23 2012 REGIONAL HEARING CLERK U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )
Carbon Injection Systems LLC, )
Scott Forster, )
and Eric Lofquist, )
Respondents. )

Docket No. RCRA-05-2011-0009

ORDER ON COMPLAINANT'S MOTION TO EXTEND RESPONSE DEADLINE FOR ITS RESPONSES TO RESPONDENTS' MOTIONS IN LIMINE

The hearing in this matter is scheduled to commence on June 18, 2012. On April 10, 2012, the undersigned issued an Order on Agreed Motion for Modifying the Pre-Hearing Schedule, in which the parties were instructed to submit any motions in limine no later than May 4, 2012, with responses due no later than May 11, 2012. In part, this deadline was intended to allow a decision on any motions in limine to be issued prior to the deadline for subpoenas. Both parties met the deadline for filing their respective motions in limine. On May 11, 2012, Respondents hand-delivered their response to Complainant's motion in limine to the Regional Hearing Clerk for filing. On May 15, 2012, Complainant filed the instant Motion to Extend Response Deadline for Its Responses to Respondents' Motion in Limine ("Motion" or "Mot."), in which Complainant seeks an 11 day extension (from May 11, 2012, to May 22, 2012) of the deadline to submit responses to Respondents' five motions in limine. Mot. at 2. Given that the deadline has already passed, the Motion to Extend is hereby deemed to be a Motion for Leave to File Out of Time requesting that the undersigned accept late-filed responses. Complainant states that inadvertent error by counsel caused it to miss the May 11th deadline. Id.

On May 18, 2012, this Tribunal received Respondents' Joint Response to Complainant's Motion to Extend Response Deadline for Its Responses to Respondents' Motions in Limine ("Resp."), in which Respondents oppose extending the deadline. Respondents argue that Complainant's three attorneys were each served a copy of the April 10th Order with the May 11th deadline set forth in bold text. Resp. at 2. Respondents note that they have already filed their response to Complainant's motion in limine and that an additional 11 days would provide a significant and unfair advantage to Complainant. Id. Respondents argue that the abbreviated deadlines set forth in the April 10th Order were established to allow for a full briefing and decision on motions in limine before the deadline for the parties' submission of motions for subpoenas. Id. Respondents then conclude that granting the extension would "place undue burdens on the parties as they continue their hearing preparations." Id.

Respondents in this case have filed five separate motions in *limine* on a range of proposed and theoretical testimony and evidence. Respondents have already filed their Response to Complainant's single motion in *limine*. The April 10th Order eliminated the automatic filing of replies for these motions and none are being required. It is unclear to what "undue burdens" Respondents refer. As Respondents note, the rationale behind the abbreviated filing deadlines was to ensure sufficient time to decide the motions in *limine* before the deadline for the motions for subpoenas. On May 17, 2012, however, Complainant submitted responses to the Respondents' motions in *limine* "in the event th[e instant] motion is granted." Complainant's Cover Letter accompanying Complainant's Responses to Respondents' Motions in *Limine* at 2. Thus, in practical terms, Complainant seeks to admit responses filed less than one week after the original deadline and already in the hands of Respondents' counsel. Most importantly, being able to rule on multiple, fully briefed motions in *limine* has the potential to save both parties significant time and expense at what is already expected to be a particularly lengthy hearing. Given the particular facts in this case, there is sufficient reason to accept Complainant's responses to Respondents' motions in *limine*. Accordingly, the Motion is **GRANTED**. Complainant is directed to submit original documents to the Regional Hearing Clerk. Both parties are reminded that the deadline for motions for subpoenas is **May 25, 2012**, and the deadline for responses remains **June 1, 2012**.

The **Regional Hearing Clerk** is directed to accept Complainant's responses for filing and the responses are deemed filed on May 17, 2012.

**SO ORDERED.**



\_\_\_\_\_  
Susan L. Biro  
Chief Administrative Law Judge

Dated: May 18, 2012  
Washington, D.C.

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PROTECTION AGENCY

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Docket No. RCRA-05-2011-0009

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Complainant's Motion To Extend Response Deadline For Its Response To Respondent's Motions In Limine**, dated May 18, 2012, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: May 18, 2012

Original and One Copy By Regular To:

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