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UNITED STATES REGIONAL HEARING CLERK  
ENVIRONMENTAL PROTECTION AGENCY U.S. ENVIRONMENTAL  
BEFORE THE ADMINISTRATOR PROTECTION AGENCY

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

Docket No. RCRA-05-2011-0009

APR 9 11 50 AM '12  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

**JOINT STIPULATIONS AS TO FACTS, EXHIBITS AND TESTIMONY**

Comes now Complainant United States Environmental Protection Agency (“EPA”) and Respondents Carbon Injection Systems LLC, Scott Forster and Eric Lofquist (hereinafter “Parties”), through counsel, pursuant to the December 29, 2011, Order on Motion for Third Party Discovery and Order on Postponing Hearing and Revising Case Schedule, and hereby file the instant Joint Stipulations as to Facts, Exhibits and Testimony.

**I. Stipulation Regarding Facts**

On behalf of the Parties, the undersigned counsels of record for Complainant and Respondents hereby jointly stipulate to the facts set forth in Schedule A, attached hereto.

**II. Stipulation Regarding Exhibits**

On behalf of the Parties, the undersigned counsels of record for Complainant and Respondents hereby jointly stipulate as follows:

**a. Exhibits that are Authentic and Admissible.**

The Exhibits listed on Schedule B, attached hereto are (1) true, accurate and complete copies of the original documents; (2) genuine and authentic; and (3) admissible at the hearing in this matter without any further evidentiary foundation being laid. There are no circumstances

that would make it unfair to rely on the Exhibits listed on Schedule B as duplicates of the original documents, in lieu of the originals. The Parties waive any and all objections as to the admissibility of the Exhibits listed on Schedule B, pursuant to Part 22 of the Consolidated Rules.

Notwithstanding the Parties stipulation as to the authenticity and admissibility of the Exhibits listed on Schedule B, the Parties expressly are not stipulating, with respect to the Exhibits listed on Schedule B, to (a) the truthfulness of any particular statements in any of the Exhibits; (b) the credibility of the person(s) making any such statements in any of the Exhibits; or (c) the weight to be given to any of the Exhibits. The Parties reserve their rights to introduce admissible evidence at the time of hearing to explain and/or place into context the Exhibits listed on Schedule B.

**b. Exhibits that are Authentic.**

The Exhibits listed on Schedule C, attached hereto are true, accurate and complete copies of the original documents, and are genuine and authentic. The Parties reserve all of their rights to object to the admissibility of the Exhibits listed on Schedule C.

**III. Additional Stipulations.**

a. Nothing in this Stipulation shall prevent either Party from introducing evidence to explain, clarify, or provide additional context for any fact or exhibit that forms the subject matter of this Stipulation.

b. This Stipulation shall not be construed as an express or implied admission of any fact not explicitly made a part of this stipulation, and shall not be construed as an express or implied admission of liability or any issue in this case. Nothing in this Stipulation shall limit the right of the Parties to make any arguments with respect to any issue in this case.

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- c. The Parties do not intend to be bound by this Stipulation as to any third party.
- d. This Stipulation shall not be used by the Parties for any reason outside of the captioned administrative proceeding.
- e. This Stipulation is made without prejudice to any later-discovered evidence.
- f. The Parties agree that this Stipulation embodies the entire agreement between them and that the details of negotiations regarding the preparation of this Stipulation may not be used by any party in this administrative proceeding.

**IV. Stipulation Regarding Written Testimony.**

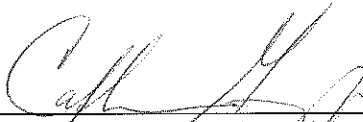
The Parties are not anticipating the introduction of any written testimony and so are not jointly stipulating to any testimony.

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SO STIPULATED:

Counsel for U.S. EPA:

4/9/12  
Date

  
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**SCHEDULE A**  
**Stipulated Facts**

**I. CARBON INJECTION SYSTEMS – GENERAL INFORMATION**

1. Carbon Injection Systems (“CIS”) was formed in August 2004 as an Ohio limited liability company
2. Scott Forster has been President of CIS since August 2004.
3. Eric Lofquist has been Vice President of CIS since August 2004.
4. Respondents are “persons” as defined by OAC § 3745-50-10(A)(88).
5. The facility is located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio.
6. On January 1, 2005, CIS and WCI Steel, Inc. entered in a “Product and Oil Supply Agreement” which [REDACTED]
7. Pursuant to the agreement, the CIS facility is located on property currently owned by RG Steel LLC, formerly Severstal Warren Inc., Warren Consolidated Industries, Inc. and WCI Steel, Inc. (collectively “WCI” for the purposes of this Stipulation.)
8. The facility was constructed in late 2004.
9. On or about February 25, 2005, CIS notified Ohio EPA of its status as a used oil processor and marketer pursuant to OAC § 3745-279-51 [40 C.F.R. § 279.42]
10. CIS had a Used Oil Analysis Plan.
11. CIS had a Contingency Plan which contained information on the arrangements with local authorities in case of a fire, explosion, spill, or release of used oil.
12. CIS has never applied for a permit to treat, store, or dispose of hazardous waste at the CIS facility, and the State of Ohio has never issued such a permit.
13. CIS did not hold a public meeting pursuant to the terms of OAC §§ 3745-50-39(A)(2), 3745-50-40(A)(2)(a)[40 C.F.R. § 124.31(b)]
14. CIS did not have a written closure plan that identified the steps necessary to perform partial or final closure of the facility at any point in its active life.
15. CIS did not have and maintain a detailed written estimate, in current dollars of the cost of closing hazardous waste management units at the facility.
16. CIS 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.

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17. The blast furnace was idled in October 2008 and WCI stopped purchasing material from CIS in October 2008.
18. CIS eventually sold its inventory of material to other facilities.
19. 

## II. CARBON INJECTION SYSTEMS' OPERATIONS

20. CIS began operations in 2005.
21. CIS's facility consisted of ten 20,000 gallon vertical above-ground tanks connected by piping to an eleventh vertical above-ground tank called the "day tank."
22. Once a material arrived at the facility, it was unloaded into one of the 10 vertical above ground storage tanks.
23. CIS stored products in "tanks" as that terms is defined under OAC § 3745-50-10(A)(114) [40 C.F.R. § 260.10]
24. The day tank at the facility fed the blast furnace at WCI.
25. The flow of material transferred to the blast furnace was metered and CIS invoiced WCI monthly for the volume of material supplied to it.
26. In a letter dated November 8, 2005, Scott Forster authorized the purchase of a shipment of "Residue Column Bottoms" from JLM for CIS and assigned the approval number CR257 to the material.
27. One shipment of JLM's "Residue Column Bottoms," was shipped to CIS on November 21, 2005.
28. 40 shipments of Unitene LE were shipped to the CIS facility from IFF between August 9, 2006 to February 27, 2009.
29. 149 shipments of Unitene AGR were shipped to the CIS facility from IFF between November 16, 2006 to February 10, 2009.

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**III. COMMUNICATONS WITH OHIO EPA AND U.S. EPA**

30. [REDACTED]

31. [REDACTED]

32. [REDACTED]

33. [REDACTED]

34. [REDACTED]

35. [REDACTED]

36. [REDACTED]

37. On October 21, 2005, a representative of Innovative Waste Management ("IWM") sent a letter to Ohio EPA regarding the use of K022 as a "replacement for coke and natural gas at carbon-injected steel mills."

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38. On December 9, 2005, Margaret Guerriero of U.S. EPA Region 5 responded to a request for regulatory guidance from Ernie Willis of IWM.

#### **IV. ENFORCEMENT HISTORY**

39. On February 8, 2008, U.S. EPA issued a Notice of Violation to CIS.
40. On February 8, 2008, U.S. EPA issued a RCRA information request to CIS.
41. CIS submitted responses to the RCRA information request on March 27, 2008 and April 28, 2008.
42. On April 28, 2008, CIS submitted to U.S. EPA a written response to the Notice of Violation.
43. On August 27, 2008, U.S. EPA conducted an inspection of the CIS facility.
44. On April 28, 2010, U.S. EPA issued a second RCRA request for information to CIS.
45. CIS submitted a response to the second RCRA information request on June 15, 2010.
46. On August 31, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to CIS.
47. On September 21, 2010, CIS submitted a response to the August 31, 2010, Notice of Intent to File Administrative Complaint.
48. On October 26, 2010, U.S. EPA issued a Notice of Intent to File Administrative Complaint to Scott Forster.
49. On November 9, 2010, U.S. EPA issued a Notice of Intent to file Administrative Complaint to Eric Lofquist.
50. 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).
51. EPA filed an Administrative Complaint May 13, 2011.
52. CIS, Scott Forster and Eric Lofquist ("Respondents") filed an Answer to the Administrative Complaint on July 14, 2011.

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**UNITENE LE AND UNITENE AGR**

- 53. IFF is a large international manufacturer of flavors and fragrances. IFF's headquarters are in New York and it has multiple manufacturing plants in the United States and elsewhere. One of its plants is located in Augusta, Georgia.
- 54. Unitene LE and Unitene AGR were two materials supplied by IFF to the CIS Facility.
- 55. Between 2006 and 2009, the CIS facility received 40 shipments of Unitene LE and 149 shipments of Unitene AGR.
- 56. Unitene LE and Unitene AGR were shipped to CIS on Bills of Lading and not RCRA hazardous waste manifests.
- 57. Myrcene is a terpene commonly produced from beta-pinene, which in turn is obtained through turpentine or crude sulfate turpentine (CST) by distillation.
- 58. Myrcene is pyrolyzed, or thermally cracked, from beta-pinene.
- 59. [REDACTED]
- 60. [REDACTED]
- 61. [REDACTED]
- 62. [REDACTED]
- 63. [REDACTED]
- 64. [REDACTED]
- 65. [REDACTED]
- 66. [REDACTED]
- 67. [REDACTED]

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68.

[REDACTED]

69.

[REDACTED]

70.

[REDACTED]

71.

[REDACTED]

72.

[REDACTED]

73.

[REDACTED]

74.

[REDACTED]

75.

[REDACTED]

76.

[REDACTED]

77.

[REDACTED]

78.

[REDACTED]

79.

[REDACTED]

80.

[REDACTED]

81.

[REDACTED]

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82.



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**SCHEDULE B**  
**Exhibits that are Authentic and Admissible**

1. RX1
2. RX20
3. RX21
4. RX22
5. RX23
6. RX31
7. RX36
8. RX41
9. RX42
10. RX43
11. RX44
12. RX45
13. RX48
14. RX49
15. RX50
16. RX51
17. RX52
18. RX53
19. RX54
20. RX55
21. RX60
22. RX65
23. RX66
24. RX67
25. RX68
26. RX69
27. RX70

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28. RX71
29. RX72
30. RX73
31. RX75
32. RX88
33. RX89
34. RX91
35. RX92
36. RX93
37. RX95
38. RX97
39. CX1
40. CX4
41. CX6
42. CX7
43. CX8
44. CX10
45. CX12
46. CX13
47. CX14
48. CX15
49. CX18
50. CX20
51. CX21
52. CX22
53. CX30
54. CX31
55. CX47
56. CX48

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- 57. CX56
- 58. CX57
- 59. CX58
- 60. CX61
- 61. CX62
- 62. CX63
- 63. CX64
- 64. CX65
- 65. CX74
- 66. CX86
- 67. CX95

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**SCHEDULE C**  
**Exhibits that are Authentic**

1. CX2
2. CX3
3. CX19
4. CX29
5. CX36
6. CX37
7. CX38
8. CX80
9. CX81
10. CX82
11. CX83
12. CX84
13. CX85
14. CX87
15. CX113
16. RX24
17. RX25
18. RX26
19. RX27
20. RX28
21. RX29
22. RX33
23. RX34
24. RX35
25. RX37
26. RX38
27. RX56

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28. RX57
29. RX58
30. RX59
31. RX61
32. RX62
33. RX63
34. RX64
35. RX79
36. RX80
37. RX83
38. RX84
39. RX85
40. RX87
41. RX90
42. RX94
43. RX96
44. RX98
45. Scott Forster Affidavit (3-16-2012)
46. Eric Lofquist Affidavit (3-16-2012)
47. Robert Malecki Affidavit (3-16-2012)
48. John Dzugan Affidavit (3-16-2012)
49. Zygmunt Oseicki Affidavit (3-16-2012)
50. Richard Murray Affidavit (3-16-2012)
51. Fredrick Rorick Expert Report
52. Bruce Sass Expert Report
53. Christopher McClure Expert Report
54. CX163 Theresa Barry Transcript
55. CX164 Donald DuRivage Transcript
56. CX161 Thomas Guido Transcript

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57. CX162 David Shepherd Transcript (Part I and II)
58. Expert Rebuttal Report and Counter-Declaration of Bruce M Sass
59. Joseph Poveromo Declaration
60. Fredrick Rorick Declaration
61. Affidavit David Shepherd (4-2-2012)
62. Affidavit Joseph Leightner (4-2-2012)
63. Affidavit Robert Malecki (4-2-2012)
64. Declaration of David Clark (3/14/12)
65. Declaration of Richard Fruehan (3/8/12)
66. First Supplemental Declaration of David Clark (3/30/12)
67. Supplemental Declaration of Richard Fruehan (3/29/12)

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**In the Matter of Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist  
Docket No. RCRA-05-2011-0009**

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Joint Stipulations as to Facts, Exhibits and Testimony," dated April 9, 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

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Copy via overnight mail to:

Attorneys for Respondents:

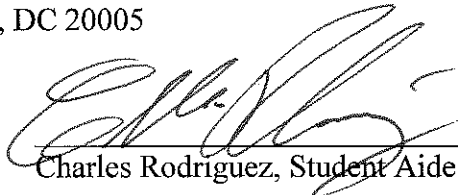
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Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
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Washington, DC 20005

4/9/12  
Date

  
Charles Rodriguez, Student Aide

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