



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

REPLY TO THE ATTENTION OF:
C-14J

March 16, 2012

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

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 Motion for Partial Accelerated Decision as to Liability and Complainant's Memorandum in Support of Its Motion for Partial Accelerated Decision as to Liability, filed on March 16, 2012, in the above-captioned matter. Please note that due to Confidential Information issues, Complainant is filing a full copy under seal and a redacted copy.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. Gatypie", written over a horizontal line.

Catherine Gatypie
Associate Regional Counsel

Enclosures

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

**COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION
AS TO LIABILITY**

Complainant, the United States Environmental Protection Agency, pursuant to 40 C.F.R. §§ 22.16 and 22.20 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"), respectfully moves that the Presiding Officer enter an order finding that Respondents Carbon Injection Systems LLC ("CIS"), Scott Forster, and Eric Lofquist ("Respondents") are liable for violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, and authorized Ohio (and parallel federal) implementing regulations.

As explained in the accompanying Memorandum in support of this Motion, there is no genuine issue of material fact that the Respondents violated RCRA when, without a RCRA permit, they stored and treated hazardous wastes at a fuel oil storage facility that CIS operated located at Gate #4 Blast Furnace Main Avenue, Warren Township, Ohio (the "Facility") from May 2005 to March 2010. Respondents stored K022, D001, D035, F003, and F005 hazardous wastes that they obtained from JLM Chemicals, Inc., located in Blue Island, Illinois, and from an International Flavors and Fragrances facility in Augusta, Georgia, in 18,000-20,000 gallon tanks

at the Facility. Respondents then treated these hazardous wastes by blending them with used oil to meet fuel specifications. The hazardous waste and used oil fuel blend was sequenced into the Respondents' "day tank" at the Facility. The Respondents sold the hazardous waste and used oil fuel blend to WCI Steel, Inc. ("WCI"), and the contents of the day tank were fed into WCI's blast furnace, where the hazardous waste and used oil fuel blend was burned for energy recovery.

Under these facts and as alleged in the Complaint, Complainant moves that the Presiding Officer enter an order finding that, as a matter of law, Respondents:

- (1) Are liable for storage and treatment of hazardous waste without a permit in violation of 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 1 of the Complaint);
- (2) 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 2 of the Complaint);
- (3) 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 3 of the Complaint);
- (4) from May 2005 to March 2010, had Facility personnel who 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)], and failed to maintain documents and records related to this training, in violation of OAC § 3745-54-16(D) [40 CFR § 264.16(d)] (Count 4 of the Complaint);

- (5) failed to attempt to make: (a) 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; (b) 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; (c) arrangements with Ohio EPA emergency response teams, emergency response contractors, and equipment suppliers; and (d) 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 5 of the Complaint);
- (6) 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 6 of the Complaint);
- (7) owned or operated the Facility from May 2005 to March 2010, and 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 7 of the Complaint);
- (8) owned or operated the Facility from May 2005 to March 2010, and 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 8 of the Complaint);
- (9) owned or operated the Facility from May 2005 to March 2010, and 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 6 of the Complaint);
- and
- (10) 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] (Count 10 of the Complaint).

WHEREFORE, because there is no genuine issue of material fact as to the applicable regulations in this matter or Respondents' liability, Complainant respectfully moves the Presiding Officer for an order finding that, as a matter of law, Respondents are liable for violations of RCRA and authorized Ohio (and parallel federal) implementing regulations, because Respondents: stored and treated hazardous waste without a permit; failed to hold a public meeting associated with obtaining a RCRA permit; did not develop and follow a sufficient written waste analysis plan from May 2005 to March 2010; had Facility personnel who 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, and failed to maintain documents and records related to this training; failed to make or attempt to make arrangements with emergency responders that would assist those responders in reacting to emergencies associated with the Facility and its operations; accepted hazardous waste at the Facility for treatment and storage without an accompanying manifest and failed to prepare and submit an unmanifested waste report to OEPA within fifteen days after receiving the waste; owned or operated the Facility without a written closure plan identifying the steps necessary to perform partial or final closure of the Facility; owned or operated the Facility without a detailed written estimate of the cost of closing their hazardous waste management units; owned or operated the Facility without obtaining and keeping on file at the Facility a written hazardous waste tank assessment; and failed to determine and provide land disposal notification and certification pursuant to the land disposal requirements.

Respectfully Submitted,

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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 Partial Accelerated Decision as to Liability", dated March 16, 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:

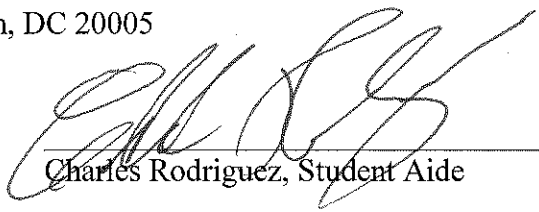
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Presiding Judge:

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Charles Rodriguez, Student Aide

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