

BROUSE McDOWELL
A LEGAL PROFESSIONAL ASSOCIATION

Keven Drummond Eiber
Attorney at Law
Direct Dial: 216.830.6816
keiber@brouse.com

Also admitted in:
Florida, Maryland and D.C.

600 Superior Avenue East
Suite 1600
Cleveland, OH 44114-2603
Office: 216.830.6830
Fax: 216.830.6807

388 S. Main Street
Suite 500
Akron, OH 44311-4407
Office: 330.535.5711
Fax: 330.253.8601

36901 American Way
Suite 2-B
Avon, OH 44011-4057
Office: 440.934.8080
Fax: 440.934.8115

www.brouse.com

December 11, 2012

United States EPA, Region 5
Office of Regional Hearing Clerk
Attn: La Dawn Whitehead
77 W. Jackson Blvd.
Mailcode: E-19J
Chicago, IL 60604-3590



**Re: Carbon Injection Systems LLC, et al. Joint Motion to Supplement the Record
Docket No. RCRA 05-2011-0009**

Dear Ms. Whitehead:

Enclosed please find an original and two copies of Carbon Injection Systems LLC, Scott Forster and Eric Lofquist's Joint Reply Complainant's Response to Respondents' Joint motion to Supplement the Record, and Opposition to Complainant's Alternative Motion to Supplement the Record. Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Keven Eiber".

Keven Drummond Eiber

Enclosure

cc: The Honorable Susan L. Biro
Catherine Garypie, J. Matthew Moore, and Jeffrey Cahn, U.S. EPA
Larry Falbe, Esq. (via e-mail)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
) **Docket No. RCRA-05-2011-0009**
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.)

RECEIVED
DEC 12 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**RESPONDENTS' JOINT REPLY TO COMPLAINANT'S RESPONSE TO
RESPONDENTS' JOINT MOTION TO SUPPLEMENT THE RECORD AND
OPPOSITION TO COMPLAINANT'S MOTION TO SUPPLEMENT THE RECORD**

Complainant opposes the introduction into evidence of the closure report submitted by Respondents, suggesting that it might be cumulative, and asserting that it is "irrelevant, immaterial, and of little probative value in this matter." The report can hardly be cumulative of evidence that was presented at the hearing because it describes activities that took place after the hearing. Complainant's assertion that the report is irrelevant, immaterial, and of little probative value, is equally without merit. The report describes closure activities that were undertaken at the former CIS facility in Warren Ohio in late 2012, which activities obviously are relevant to Complainant's request for relief in this matter. Indeed, Complainant introduced the closure plan, presumably because Complainant considered it to be relevant, material and of some probative value. (Tr., Vol II, p. 368-370, CX197). Complainant apparently takes issue with Respondent's counsel's characterization of the report as evidencing that the facility was "properly" closed pursuant to Ohio law. Counsel's statements, however, are not evidence, but rather are in the

nature of argument. Complainant remains free to argue, as well, that the closure activities were not sufficient to meet Ohio's procedural requirements because the facility did not wait for Ohio EPA approval before implementing the closure plan.¹ Complainant in its opposition does not suggest, however, that the report fails to accurately describe the measures that were in fact undertaken, does not suggest that the measures were inadequate other than on procedural grounds, and does not dispute the authenticity of the document.

In In the Matter of Chempace Corporation, No. 5-IFFRA-96-017, Order Granting Motion to Supplement Record (E.P.A. Nov. 3, 1998), the respondent similarly filed a post-hearing motion to supplement the record with a single additional relevant document, without reopening the hearing further to take additional testimony. The Presiding Officer held that the motion sufficiently satisfied the requirements of 40 C.F.R. § 22.28, and the document was relevant and its admission did not prejudice the Complainant, and granted the motion over Complainant's opposition. The single document sought to be admitted by Respondents here similarly should be received. For these reasons, the closure report should be received and made a part of the record in this matter.

Respondents oppose Complainant's motion to further supplement the record with additional documents and to reopen the hearing to take the testimony of multiple witnesses. Ohio EPA's closure requirements are a matter of law and do not need to be introduced as evidence. The parties can cite to those regulations without reopening the hearing. Furthermore,

¹ As Complainant itself noted, Ohio EPA will not review and approve the closure plan until after this enforcement proceeding is concluded and after the entry of an administrative order between Ohio EPA and the facility owner, Main Street Commodities LLC ("MSC"). (Complainant's Response, p. 4, n. 2). The Presiding Officer indicated that the decision in this matter "will take at least a year from now[.]" (Tr., Vol. X, p. 2511). In connection with the pending RG Steel bankruptcy, however, RG Steel terminated MSC's lease and sold the steel mill in Warren, Ohio where the facility was located to a liquidator. MSC no longer has access to the steel mill, which is expected to be completely dismantled. Complainant fails to appreciate that MSC implemented the closure plan during the only window of time in which it was possible to do so, and did so completely voluntarily presuming, but not conceding, that the facility had stored K022 and D035 listed wastes.

Ohio EPA's closure requirements are not new, and Complainant had a full and fair opportunity to introduce evidence, and did introduce evidence, regarding those requirements at the June hearing. (See, CX-118, Tr., Vol. II, pp. 370-371 (Mr. Beedle's testimony regarding whether the proposed closure activities met requirements)). Complainant does not assert that there has been any change in Ohio EPA's RCRA closure requirements since the time of the hearing.

For these reasons, Complainant's Motion to Supplement the Record should be denied.



Keven Drummond Eiber (OH 0043746)
Meagan L. Moore (OH 0079429)
Michael P. O'Donnell (OH 0078390)
Brouse McDowell
600 Superior Avenue East, Suite 1600
Cleveland, OH 44114
Telephone: (216) 830-6830
Facsimile: (216) 830-6808
keiber@brouse.com
mmoore@brouse.com



Lawrence W. Falbe (IL 06224888)
Quarles & Brady LLP
300 N. LaSalle St., Suite 4000
Chicago, Illinois 60654
Telephone: (312) 715-5223
Facsimile: (312) 632-1792
larry.falbe@quarles.com

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

CERTIFICATE OF SERVICE

I, Megan L. Moore, an attorney, hereby certify that the foregoing Respondents' Joint Reply to Complainant's Opposition to Respondents' Joint Motion to Supplement the Record and Opposition to Complainant's Motion to Supplement the Record was sent on December ^{11th}, 2012, in the manner indicated, to the following:

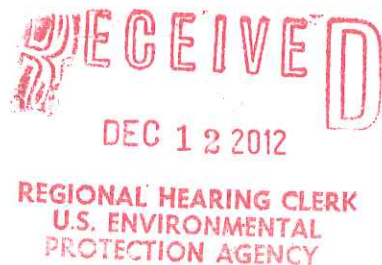
Original and One Copy by Overnight Delivery to:

LaDawn Whitehead, Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Copy by Overnight Delivery to:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005


Catherine Garypie, Esq.
Jeffrey Cahn, Esq.
Matthew Moore, Esq.
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60622



Copy by E-Mail to:

Lawrence W. Falbe
Quarles & Brady LLP
300 N. LaSalle St., Suite 4000
Chicago, Illinois 60654

December 11, 2012



Keven Drummond Eiber

RECEIVED

DEC 12 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY