

**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 LEAVE TO FILE ITS THIRD SUPPLEMENTAL
PREHEARING EXCHANGE**

Comes now Complainant, the United States Environmental Protection Agency, Region 5 (Complainant or the Region), by and through its counsel, pursuant to Rules 22.16 and 22.19(f) 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), hereby files its Motion for Leave to File Its Third Supplemental Prehearing Exchange. Respondents have informed EPA that they do not intend to oppose this motion. In support of this Motion, Complainant states as follows:

I. Background

Complainant seeks to file its Third Supplemental Prehearing Exchange, which will contain the following:

A. Additional Exhibits

Complainant is replacing one document (CX99), updating three more (CX195 updates CX92, CX196 updates CX91, and CX198 updates CX193), and adding four other documents

which were recently created and/or obtained by Complainant (CX197, CX199, CX200 and CX201):

CX99-2/27/06 Complaint filed by State of Ohio against GEM, ESG, Eric Lofquist and Scott Forster.
CX195-Resume Gail Coad
CX196-Resume Michael Beedle
CX197-5/24/12 Letter from L. Smith (GT) to B. McCoy (OEPA)
CX198-Revised Penalty Narrative (*CBI)
CX199-David Shepherd Deposition Errata Sheet
CX200-5/31/12 RG Steel press release
CX201-5/25/12 Vindicator Article "RG Steel closure to idle 1,000"

II. Standard of Review

Section 22.19(f) of the Rules states that a party must supplement prior exchanges "when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and additional or corrective information has not otherwise been disclosed to the other party pursuant to this section." 40 C.F.R. § 22.19(f); *In the Matter of Mercury Vapor Processing Technologies, Inc., et al.*, Docket No. RCRA-05-2010-0015, 2011 EPA ALJ LEXIS 16 at *4 (July 15, 2011); *In the Matter of Aguakem Caribe, Inc.*, Docket No. RCRA-02-2009-7110, 2010 EPA ALJ LEXIS 11 at *6 (May 14, 2010), and; *In the Matter of: 99 Cents Only Stores*, Docket No. FIFRA-9-2008-0027, 2009 EPA ALJ LEXIS 9 (June 18, 2009). Furthermore, motions to supplement a prehearing exchange should be granted unless there is evidence of bad faith, delay tactics, or undue prejudice. *In the Matter of Service Oil, Inc.*, Docket No. CWA-08-2005-0010, 2006 EPA ALJ LEXIS 16 at *9 (April 12, 2006).

III. Discussion

The additional exhibits are being submitted now for the following reasons: (1) CX99 as filed with Complainant's Initial Prehearing Exchange was inadvertently missing several pages; (2) CX195 is being filed to provide this Court and Respondents with additional information

regarding the background of Gail Coad (this document is a revised version of CX92); (3) CX196 is being filed to provide this Court and Respondents with additional information regarding the background of Michael Beedle (this document is a revised version of CX91); (4) CX197 is a closure plan for the CIS facility dated May 24, 2012, which was only just submitted to the Ohio Environmental Protection Agency; (5) CX198 is a revised penalty narrative which contains the same information as was provided in CX193, with some additional attachments which were inadvertently omitted from CX193; (6) CX199 is an errata sheet for the David Shepherd deposition (CX162), which Complainant recently received from Respondent; (7) CX200 is a press release dated May 31, 2012, which Complainant recently obtained; and (8) CX201 is a May 25, 2012, news article, which Complainant recently obtained. In short, Complainant is providing the Court and Respondents with more complete and updated information, consistent with Section 22.19(f) of the Rules. 40 C.F.R. § 22.19(f). Complainant's prehearing exchange is incomplete without this additional information. Furthermore, this Motion is being submitted more than fifteen (15) days prior to the start of the hearing. 40 C.F.R. § 22.22(a)(1).

Accordingly, Respondents have ample time to review the information. In fact, Respondents already have a complete copy of CX99 (the original was issued to Respondents Forster and Lofquist), and Complainant obtained CX199 from Respondents. Thus, Respondents will suffer no prejudice from the addition of the new witness information and proposed exhibits provided in Complainant's Third Supplemental Prehearing Exchange.

IV. Conclusion

For the foregoing reasons, Complainant respectfully requests that the Presiding Officer grant it leave to file its Third Supplemental Prehearing Exchange.

Respectfully Submitted,

Counsel for EPA:

6/1/12
Date



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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 Leave to File Its Third Supplemental Prehearing Exchange", dated June 1, 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:

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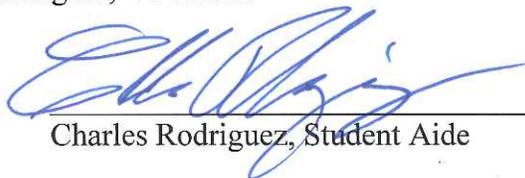
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Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge
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6/1/12
Date


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