



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

June 13, 2012

REPLY TO THE ATTENTION OF:
C-14J

The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.,
Mail Code 1900L
Washington, D.C. 20460

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 Leave to File Its Fourth Supplemental Prehearing Exchange and Complainant's Fourth Supplemental Prehearing Exchange, filed on June 13, 2012, in the above-captioned matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Matthew Moore".

J. Matthew Moore
Assistant Regional Counsel

Enclosure

cc: Keven D. Eiber (w/ enclosure)
Lawrence W. Falby (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Carbon Injection Systems, LLC,
Scott Forster,
Eric Lofquist,

Respondents.

) Docket No. RCRA-05-2011-0009
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**COMPLAINANT'S MOTION FOR LEAVE TO FILE ITS FOURTH 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 Fourth 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 Fourth Supplemental Prehearing Exchange, which will contain corrected versions of two exhibits that were included in Complainant's Initial Prehearing Exchange. Specifically, Complainant seeks to correct CX25, which was inadvertently missing a page, and CX7, which was accidentally copied with a post-it note on EPA6770. Therefore, EPA submits CX25 with EPA15332A to account for the page that was missing from the initial submittal, and CX7 without the post-it note on EPA6770.

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).

Additionally, Section 22.22(a)(1) controls the admittance of evidence that was not provided prior to 15 day before the day of hearing. 40 C.F.R. § 22.22(a)(1). Section 22.22(a)(1) states that the Presiding Officer shall not admit the document, “unless the non-exchanging party had good cause for failing to exchange the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.” *Id.*

III. Discussion

In correcting the previously exchanged documents, Complainant attempts to provide all parties and the Presiding Officer with complete and accurate exhibits. While this Motion is being submitted fewer than fifteen (15) days prior to the start of the hearing, Complainant requests that this Court acknowledge the large volume of documents at issue in this proceeding and appreciate the associated difficulties. Due to the large volume of documents involved in this

proceeding, Complainant had not recognized the clerical errors in CX7 and CX25 until late last week, during witness preparations. Therefore, the oversight was not due to bad faith or delay tactics. Additionally, because the requested corrections are merely clerical in nature, they result in no substantive changes to the previously submitted documents; and thus, no prejudice results.

IV. Conclusion

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

Respectfully Submitted,

Counsel for EPA:

6/13/12
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 Fourth Supplemental Prehearing Exchange", dated June 13, 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:

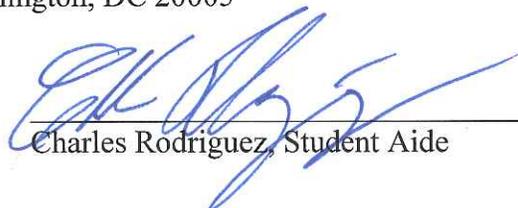
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Keven D. Eiber
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Lawrence W. Falbe
Quarles & Brady LLP
300 N. LaSalle Street, Suite 4000
Chicago, IL 60654

Presiding Judge:

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

6/13/12
Date



Charles Rodriguez, Student Aide

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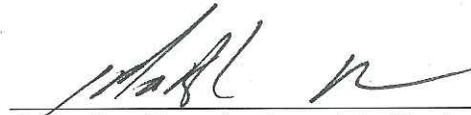
Revised Exhibits:

- CX7- 4/17/09 GTI Information Request response to EPA without Post-it note attached (*CBI)
- CX25- 5/20/08 EPA Information Request to WCI with missing page included

Respectfully Submitted,

Counsel for EPA:

6/13/12
Date


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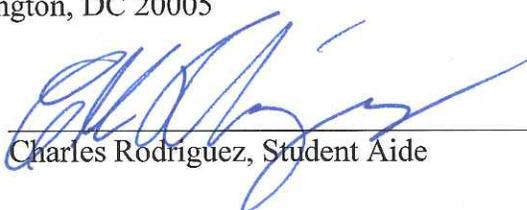
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Chicago, IL 60654

Presiding Judge:

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