

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
MAY 17 2012
U.S. EPA REGION 5
COLUMBUS, OH

In the Matter of:)
)
Carbon Injection Systems LLC;)
Scott Forster, President;)
Eric Lofquist, Vice President) Docket No. RCRA-05-2011-0009
Gate #4 Blast Furnace Main Ave)
Warren Township, OH 44483)
)
EPA ID No. OHR000127910)
)
Respondents.)

**RESPONDENTS CARBON INJECTION SYSTEMS LLC,
SCOTT FORSTER AND ERIC LOFQUIST'S JOINT RESPONSE
TO COMPLAINANT'S MOTION TO EXTEND RESPONSE DEADLINE FOR
ITS RESPONSES TO RESPONDENTS' MOTIONS IN LIMINE**

Respondents Carbon Injection Systems LLC, Scott Forster and Eric Lofquist, (collectively referred to as "Respondents") respectfully request that Complainant's Motion to Extend Response Deadline for its Responses to Respondents' Motions In Limine, deemed to be a Motion for Leave to File Out of Time, be denied.

On Tuesday, May 15, 2012, counsel for Complainant asked counsel for Respondents to consent to a one-day extension of time, from Monday May 21, 2012 to Tuesday May 22, 2012, to file its responses to Respondents' motions *in limine*. The grounds for the requested extension were that the NATO Summit scheduled to begin in Chicago on May 20, 2012, could disrupt the business of U.S. EPA. As acknowledged by Complainant in its motion, counsel for Respondents responded that while they would not object to a one-day extension for such reason,¹ the filing deadline had already passed.

¹ Respondents agree that any Region V filing deadline of May 20 or 21, 2012, appropriately should be extended to May 22, 2012, due to the disruption of business that is anticipated to stem from the NATO Summit activities in Chicago.

Complainant's error regarding the filing deadline should not be excused. Complainant has *three* attorneys. Each one of them was served with the Order on Agreed Motion for Modifying the Pre-Hearing Schedule on April 10, 2012, by both e-mail and regular mail. The May 11, 2012 filing deadline that Complainant's counsel "erroneously believed to be May 21" was set forth in **bold** text in that order. Complainant's counsel's oversight was not caused by the impending NATO Summit activities, which are not scheduled to begin until May 20, 2012. Complainant's counsel are, presumably, no busier with their "other hearing preparation activities" than are Respondents' counsel.

Respondents already timely filed their responses to Complainant's motions *in limine* within the seven-day response time established by the April 10, 2012 Order, on May 11, 2012. Complainant's counsel were served with Respondents' filing by e-mail the same day, which also should have alerted each of them to the filing deadline. Complainant now asks, after the fact, for an additional *eleven days* within which to file its responses. Such a unilateral extension would provide a significant and unfair advantage to Complainant.

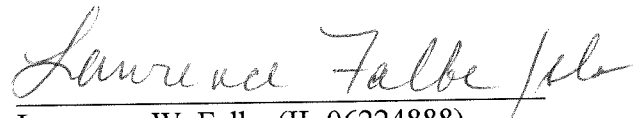
Furthermore, as explained in the April 10, 2012 Order, the results of any motions *in limine* should be obtained before the parties are required to move for the issuance of subpoenas and in time for the parties to benefit in terms of their hearing preparation. For these reasons, although the parties had requested until May 18, 2012, to file motions *in limine*, Chief Judge Biro determined that the deadlines should be sooner. The extension requested by Complainant would be inconsistent with Judge Biro's rationale and it would unnecessarily strain an already extremely tight schedule and place undue burdens on the parties as they continue their hearing preparations.

Accordingly, because Complainant's error has no valid excuse, the requested extension would be unfair, and any extension would place undue burdens on the parties, Complainant's Motion to Extend Response Deadline for its Responses to Respondents' Motions in Limine, deemed a Motion for Leave to File Out of Time, should be denied.

Dated: May 17, 2012

Respectfully submitted,

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*Attorneys for Respondents Carbon Injection
Systems LLC, Scott Forster, and Eric
Lofquist*

CERTIFICATE OF SERVICE

I, Lawrence W. Falbe, an attorney, hereby certify that the foregoing **RESPONDENTS CARBON INJECTION SYSTEMS LLC, SCOTT FORSTER AND ERIC LOFQUIST'S JOINT RESPONSE TO COMPLAINANT'S MOTION TO EXTEND RESPONSE DEADLINE FOR ITS RESPONSES TO RESPONDENTS' MOTIONS IN LIMINE** was sent on May 17, 2012, in the manner indicated, to the following:

Original and One Copy by hand 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

Copy by hand delivery to:

Catherine Garypie, Esq.
Jeffrey Cahn, Esq.
Matthew Moore, Esq.
Office of Regional Counsel
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May 17, 2012

Lawrence Falbe / sls

Lawrence W. Falbe