



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

REPLY TO THE ATTENTION OF:

February 3, 2012

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 Reply to Respondents' Response to Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion, filed on February 3, 2012, in the above-captioned matter.

Sincerely yours,

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

J. Matthew Moore  
Assistant Regional Counsel

Enclosures

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

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
  
BEFORE THE ADMINISTRATOR

In the Matter of: )  
 )  
Carbon Injection Systems LLC, )  
Scott Forster, )  
and Eric Lofquist, )  
 )  
Respondents. )  
\_\_\_\_\_ )

Docket No. RCRA-05-2011-0009

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FEB 03 2012

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USEPA  
REGION 5

**COMPLAINANT'S REPLY TO RESPONDENTS' RESPONSE TO COMPLAINANT'S  
MOTION FOR AN ADMINISTRATIVE SUBPOENA TO ISSUE FOR THE  
DEPOSITION OF A THIRD-PARTY WITNESS, AND FOR A REVISED RESPONSE  
DATE FOR THE MOTION**

In accordance with Sections 22.16(a) and (b) 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"), 40 C.F.R. § 22.16(a) and (b), Complainant offers this Reply to Respondents' Response to Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion.

EPA's motive in filing Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion ("Complainant's Motion") is simple. At the time Complainant's Motion was filed, there was no effective administrative subpoena in place for the deposition of Mr. Donald DuRivage, the Environmental Health and Safety Manager of International Flavors and Fragrances, Inc.'s ("IFF's") Augusta facility during the time that the decisions to market Unitene materials were made. There was also no motion to reissue the DuRivage subpoena pending. EPA was

particularly concerned about ensuring a subpoena would be issued due to the cooperative nature of Respondents' relationship with IFF. EPA has previously noted that Respondents' and IFF's interests are aligned. If the Unitene material generated by IFF is declared a hazardous waste by this Court, both companies are potentially subject to significant civil penalties for various violations of RCRA regulations. Realizing their common interest, Respondents and IFF have motive to work together to avoid RCRA jurisdiction. *See* CX56 and CX57.

In consideration of this potential cooperative relationship and the EPA communications with counsel for IFF (Mara Levin) the steps EPA has taken to assure that Mr. DuRivage's deposition takes place under appropriate circumstances (for example, as the U.S. Attorney's Office in Columbia, South Carolina) are warranted. As demonstrated in Exhibit B to Complainant's Motion, counsel for IFF has misleadingly indicated that Mr. DuRivage's testimony should be of no significance to the current enforcement action. However, documents submitted by IFF in each of its responses to EPA's Requests for Information, as well as the testimony of IFF's witnesses on January 31 and February 1, 2012, demonstrated the opposite. Wary that Mr. DuRivage may not be presented for deposition, EPA filed its Motion. Appreciating the potential significance of Mr. DuRivage's testimony, EPA's objective was to assure that his deposition occurred, regardless of Respondents' intentions.

For all of the reasons set forth above, EPA respectfully requests that this Court grant the Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for The Motion.

Respectfully submitted,

Counsel for EPA:



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Docket No. RCRA-05-2011-0009

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CERTIFICATE OF SERVICE

I certify that the foregoing "Complainant's Reply to Respondents' Response to Complainant's Motion for an Administrative Subpoena to Issue for the Deposition of a Third-Party Witness and for a Revised Response Date for the Motion" dated February 3, 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 UPS Overnight Mail to:

Attorneys for Respondents:

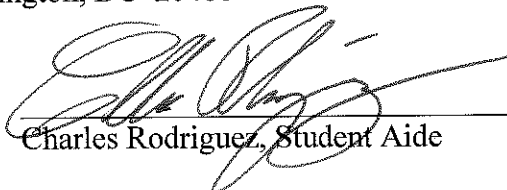
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
c/o Lawrence W. Falbe  
Quarles & Brady LLP  
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Carbon Injection Systems LLC, Scott Forster, Eric Lofquist  
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Presiding Judge:

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

2/3/12  
Date

  
Charles Rodriguez, Student Aide