

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

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

Docket No. RCRA-05-2011-0000

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**Complainant's Motion to Replace Complainant's Exhibit 2, 3, 9, 12, 79-114 and 135**

Comes now the U.S. Environmental Protection Agency, Region 5 (EPA or Complainant), through its undersigned attorney, pursuant to Section 22.16 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, codified at 40 C.F.R. Part 22, § 22.16, and respectfully requests that the Presiding Officer grant the instant "Complainant's Motion to Replace Complainant's Exhibits 2, 3, 9, 12, 79-114 and 135.

Subsequent to the filing of "Complainant's Initial Prehearing Exchange" on October 14, 2011 and "Complainant's Rebuttal Prehearing Exchange" on November 18, 2011, EPA discovered clerical and scanning errors in Complainant's Exhibits 2, 3, 9, 12, 79-114 and 135. Due to these errors, CX2 was not in the proper order; CX3 was not in the proper order and an unrelated privileged document was inadvertently disclosed; CX9 included an irrelevant document; CX12 inadvertently excluded one page; CX 79-CX99 were difficult to open on disks in EPA's possession; CX90-114 included a blank scanned page on every other page; and CX135 inadvertently excluded two pages.

In the enclosed CD-ROM disks, EPA made the following corrections:

- CX2: the exhibit is now in the proper order;
- CX3: the exhibit is now in the proper order. Also, the unrelated privileged document has been removed, and the .pdf file for CX3 now notes the omission;
- CX9: the unrelated privileged document has been removed, and the .pdf file for CX9 now notes the omission;
- CX12: the inadvertently excluded page EPA10087A is now included;
- CX79-CX99: new .pdf files were loaded to the disks;
- CX90-114: the blank scanned page on every other page has been removed; and
- CX135: the two pages which were inadvertently excluded EPA 23408-23409 are now included.

By remedying the errors listed above, EPA will benefit all parties by presenting a clear record at hearing. Therefore, Complainant respectfully requests leave to replace Complainant's Exhibits 2, 3, 9, 12, 79-99, and 135 which were included in "Complainant's Initial Prehearing Exchange", with Complainant's Exhibits 2, 3, 9, 12, 79-114 and 135 as attached hereto.

In accordance with Federal Rule of Evidence 502(b) and EPA's December 30, 2011 email preserving the attorney-client and/or work product privileges for the inadvertently disclosed documents in CX3, EPA requests that the Court and Respondents destroy the CD-ROM disks provided in Complainant's Initial Prehearing Exchange, as well as any paper copies of privileged documents which may have been created from those CD-ROM disks. Enclosed are CD-ROM disks that include all exhibits listed in Complainant's Initial Prehearing Exchange and Complainant's Rebuttal Prehearing Exchange, reflecting those replacements requested in the current motion. There are five disks total: one does not contain CBI and the other four disks contain both CBI and non-CBI.

Prior to filing this Motion, the undersigned contacted the opposing parties as to the relief requested herein and said opponents indicated that they do not oppose the Motion.

Respectfully submitted,

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Counsel for EPA:



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

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Complainant's Motion to Replace Complainant's Exhibit 2, 3, 9, 12 and 79-99" dated January 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

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Copy via Regular Mail to:

Attorneys for Respondents:

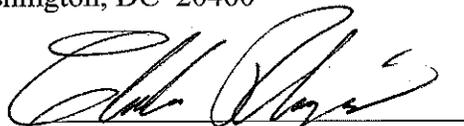
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Presiding Judge:

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

01/13/2012  
Date

  
\_\_\_\_\_  
Charles Rodriguez, Student Aide