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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MATE TECHNOLOGIES, INC.)	
)	
Complainant,)	
)	
v.)	PCB No. 2004-075
)	(Enforcement X)
F.I.C. AMERICA CORPORATION,)	
)	
Respondent.)	

NOTICE OF FILING

Please be advised that on the 6th day of February, 2004 Complainant Mate Technologies, Inc. submitted for filing with the Illinois Pollution Control Board the document titled, "Complainant's Motion to Extend Time to Respond to Respondent's Discovery And to Establish Discovery Schedule," a copy of which is attached hereto.

Dated: February 6, 2004

MATE TECHNOLOGIES, INC.

By: 
Carey S. Rosemarin

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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MATE TECHNOLOGIES, INC.

Complainant,

v.

F.I.C. AMERICA CORPORATION,

Respondent.

PCB No. 2004-075
(Enforcement X)

**COMPLAINANT'S MOTION TO EXTEND TIME
TO RESPOND TO RESPONDENT'S DISCOVERY
AND TO ESTABLISH DISCOVERY SCHEDULE**

NOW COMES Complainant Mate Technologies, Inc. ("Mate"), by and through its attorney, the Law Offices of Carey S. Rosemarin, P.C. and pursuant to 35 Ill. Adm. Code §§101.522, 101.610 and 101.616, moves for an extension of time to respond to the discovery served by Respondent FIC America Corporation ("FIC") until such time as the Parties can establish a discovery schedule. This Motion is directed to Hearing Officer Halloran. In support of this Motion Complainant states as follows:

1. On January 5, 2004, FIC filed its "Motion of Respondent to Dismiss or, in the Alternative, Strike," and on January 23, 2004 Mate filed its timely opposition to FIC's motion.
2. In its order of January 22, 2004 ("Order"), the Illinois Pollution Control Board ("Board") accepted Mate's complaint for hearing, but stated, "FIC has filed no motion." The Order also required FIC to answer Mate's complaint. For reasons that are unknown, the Board may not have been aware of FIC's motion at the time it issued the Order.
3. On February 5, 2004, Hearing Officer Halloran proposed that a conference be conducted

at 11:00 a.m. on February 9, 2004, to determine what had transpired before the Board and possibly establish an initial litigation schedule.

4. However, on or about January 9, 2004 (a few days after filing its motion to dismiss), FIC served the following documents on Mate: i) "Respondent's First Set of Interrogatories to Complainant;" and ii) "Respondent's First Request upon Complainant for Production of Documents" (collectively, the "Discovery").

5. The time to respond to Respondent's Discovery should be extended until such time as the Hearing Officer and the Parties can establish a reasonable discovery schedule. The Parties also need to determine why the Board issued its Order.

6. In any event, the relevant issues need to be defined before the Parties rush into discovery. For that reason, at the very least, discovery should be postponed until FIC has answered the complaint. Because the relevant issues have not been identified, the Discovery is not well thought out. It is grossly overbroad and not calculated to lead to the discovery of admissible evidence.¹ Clearly, responding to such requests would not advance the litigation at all, and would only result in causing Mate to incur needless expense.

7. The Parties may be entering settlement negotiations in the immediate future. Should that process take hold, the Parties will define the relevant issues and focus on the important information that needs to be exchanged. That will be a more efficient and productive process

¹ For example, Interrogatory #9 reads, "Identify all photographs, films, videos, maps, plans, surveys, diagrams and figures of the Property, including: A. The date(s) it was created; B. Its subject matter; and C. The person(s) who created it." And Document Request #4 asks Mate to produce "Each material safety data sheet ("MSDS") and all similar Documents for products, substances or materials ever at the Property and all OSHA hazard communication standard documents pertaining to the Property."

than that reflected in the Discovery, and should be given a reasonable chance to work.

8. Mate proposes that the issue of the discovery schedule be discussed during the conference call of February 9, 2004. (In making this proposal, Mate does not intend to foreclose FIC's rights to respond to this Motion in accordance with the Board's procedural rules.)

Conclusion

For the reasons set forth above, the Hearing Officer should: 1) Extend the time for Mate to respond to the Discovery; and 2) Schedule a conference call with the Parties, after FIC files its answer, to determine a discovery schedule.

Respectfully submitted,

MATE TECHNOLOGIES, INC.

By: 

Carey S. Rosemarin

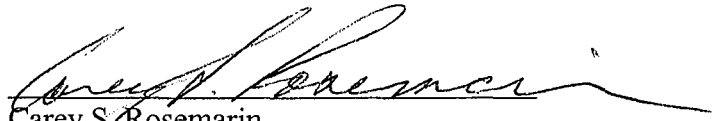
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CERTIFICATE OF SERVICE

I, Carey S. Rosemarin, an attorney, hereby certify that I caused a copy of the foregoing "Notice of Filing" and "Complainant's Motion to Extend Time to Respond to Respondent's Discovery And to Establish Discovery Schedule" to be served upon:

Jeremy A. Gibson, Esq.
Mitchell S. Chaban, Esq.
Masuda, Funai, Eifert & Mitchell, Ltd.
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by regular U.S. Mail, on February 6, 2004.



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