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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

SEP 08 2004

STATE OF ILLINOIS
Pollution Control Board

MORTON F. DOROTHY,

Complainant,

vs.

FLEX-N-GATE CORPORATION,
an Illinois Corporation,

Respondent.

No. PCB 04-05-49

NOTICE

To:

Flex-N-Gate Corporation
Angela M. Brooks
Registered Agent
502 East Anthony Drive
Urbana, Illinois 61802

TAKE NOTICE THAT I HAVE FILED THE ACCOMPANYING COMPLAINT WITH THE ILLINOIS POLLUTION CONTROL BOARD. YOU MAY BE REQUIRED TO ATTEND A HEARING AT A DATE SET BY THE BOARD. (35 Ill. Adm. Code 103.204(a)).

Failure to answer this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. (35 Ill. Adm. Code 103.204(f)).

Morton F. Dorothy

Morton F. Dorothy, Complainant

Morton F. Dorothy
804 East Main
Urbana IL 61802
217/384-1010

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STATE OF ILLINOIS
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MORTON F. DOROTHY,)
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Complainant,)
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vs.)
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FLEX-N-GATE CORPORATION,)
an Illinois Corporation,)
)
Respondent.)

No. PCB 04-05-49

COMPLAINT

Complainant, Morton F. Dorothy, for his complaint against respondent, Flex-n-gate Corporation, an Illinois corporation, alleges as follows.

ALLEGATIONS COMMON TO ALL COUNTS

1. This is a citizens complaint filed pursuant to Section 31 of the Environmental Protection Act ("Act") (415 ILCS 5/31) and 35 Ill. Adm. Code 103.200.
2. Complainant is an individual residing in Champaign County, Illinois.
3. Respondent, Flex-n-gate Corporation, is an Illinois corporation which owns and operates a facility known as Guardian West, 601 Guardian Drive, Urbana, Champaign County, Illinois.
4. The facility produces bumpers for vehicles. The facility includes a "chrome plating line" in which steel bumpers are cleaned, electroplated with several layers of nickel, electroplated with chromium, and rinsed.
5. The cleaning, plating and rinsing operations take place in open-top tanks holding up to 10,000 gallons of various chemicals in water solution. The tanks are arranged in two rows, with a catwalk between the rows to access the tops of the tanks.
6. The tanks are mounted on concrete piers above a coated concrete floor. Spilled chemicals fall to the floor, where they accumulate in sumps to be pumped to a hazardous waste treatment unit.
7. The spillage on the floor is hazardous waste as defined in 35 Ill. Adm. Code 721.

8. The spillage on the floor is a complex mixture that includes chromic acid, nickel sulfate from the nickel plating tanks, sulfuric acid, and various proprietary high-sulfur additives used in one of the nickel plating tanks to form a high-sulfur, corrosion resistant nickel layer.
9. The spillage on the floor includes contaminated debris and sludge beds.
10. The facility includes a hazardous waste treatment unit, which includes pH adjustment, reduction of hexavalent chromium with sodium metabisulfite, and precipitation of a nickel and chromium hydroxide sludge. Treated wastewater is discharged to a sanitary sewer owned by the Urbana Champaign Sanitary District. Sludge is hauled off site for recycling and disposal. Sludge is F006, a hazardous waste listed in 35 Ill. Adm. Code 721.131.
11. The Illinois Environmental Protection Agency has not issued a RCRA permit for the facility.
12. Respondent claims that the facility operates pursuant to 35 Ill. Adm. Code 703.123(a) and 722.134(a), as a large quantity generator of hazardous waste which is treated on-site in tanks, without a RCRA permit or interim status. In the event the Board determines that this claim is valid, Section 722.134(a)(4) requires compliance with 35 Ill. Adm. Code 725.Subpart D, including Sections 725.151 through 725.156. In the event the Board determines that this claim is invalid, respondent is operating an unpermitted hazardous waste treatment and storage facility which is subject to Sections 725.151 through 725.156 directly.
13. Under and adjacent to the catwalk there is a piping system used to transfer concentrated sulfuric acid to certain tanks.
14. On or about August 5, 2004, a pipe containing sulfuric acid ruptured or separated adjacent to the catwalk, spilling concentrated sulfuric acid onto the floor under the catwalk.
15. The sulfuric acid reacted with the waste mixture on the floor, producing hydrogen sulfide gas.
16. Hydrogen sulfide is a toxic gas that is heavier than air. It is listed as a "highly hazardous chemical which presents a potential for a catastrophic event" in 29 CFR 1910.119 App A. Hydrogen sulfide is often encountered when entering sanitary sewer manholes. The Occupational Safety and Health Administration (OSHA) recommends a limit of 10 ppm hydrogen sulfide for entry into manholes (29 CFR 1910.146 App E).
17. 35 Ill. Adm. Code 721.123(a)(5) defines one type of D003, "reactive waste" as follows: "It is a cyanide or sulfide bearing waste which, when exposed to pH

conditions between 2 and 12.5 can generate toxic gases, vapors, or fumes in a quantity sufficient to present a danger to human health or the environment."

18. Section 725.151 requires that the owner or operator have a "contingency plan" for the facility.
19. Section 725.155 requires an "emergency coordinator".
20. Respondent has a safety office, with one safety officer generally present at the facility at all times.
21. Certain line workers at the facility are required to attend 24-hour "hazwoper" training as first responders to an emergency situation. They are trained to contact safety in the event of a release. The trained line workers are then to assist safety and other responders if needed.
22. After discovering the acid spill and determining that a hydrogen sulfide release was occurring, the hazwoper-trained line workers began an immediate response and paged safety.
23. When safety arrived, the line workers explained the situation to safety, and requested that safety get a hydrogen sulfide probe to determine whether the levels were safe.
24. Safety responded that he did not know what a hydrogen sulfide probe was and did not know whether one was present at the facility.
25. Line workers told safety that hydrogen sulfide was a toxic gas, that the Urbana Fire Department had a hydrogen sulfide probe, and that safety needed to consider evacuation of the building. Safety responded by recommending that people stay back from the immediate area of the release, and asked if fans would help. Line workers responded that they had no fans. Safety then departed and was not seen again by the first responders for the remainder of the immediate response.
26. Line workers directed water hoses toward the area of the emission, and then retreated from the area, allowing water to dilute the acid and waste, washing it to the hazardous waste treatment unit.
27. Line workers became light-headed, dizzy and nauseated from the release.

COUNT I

OPERATION WITHOUT A RCRA PERMIT OR INTERIM STATUS

Complainant realleges and incorporates by reference the allegations common to

all Counts in this Count .

1. Respondent is operating a hazardous waste treatment and storage facility without a RCRA permit or interim status, in violation of Section 21(f) of the Act and 35 Ill. Adm. Code 703.121(a).
2. Because of the age of the waste under the catwalk, chemical or biological reactions may have converted part of the sulfate waste to the sulfide form, allowing the formation of hydrogen sulfide gas on contact with acid.
3. Section 42(a)(3) of the Act provides for a civil penalty of \$25,000 per day for violation of the RCRA permit requirement in Section 21(f) of the Act.
4. 35 Ill. Adm Code 103.400 et seq. Include procedures under which the Board would supervise the issuance of a RCRA permit.

WHEREFORE Complainant prays:

- A. That the Board set this matter for hearing.
- B. That the Board determine that respondent has violated the RCRA permit requirement of Section 21(f) of the Environmental Protection Act and 35 Ill. Adm. Code 703.121(a).
- C. That the Board assess a civil penalty of \$25,000 per day for the violation.
- D. That the Board enter an order requiring that Respondent file a Part A and Part B RCRA permit application with the Illinois Environmental Protection Agency.
- E. In the event that, following enforcement hearings in this case, the Board determines that it is necessary for the Board to order the issuance of a RCRA permit, that the Board enter an interim order pursuant to 35 Ill. Adm. Code 103.402.
- F. For such other relief as the Board may determine to be necessary.

COUNT II
FAILURE TO CARRY OUT CONTINGENCY PLAN
AS REQUIRED BY SECTION 725.151

Complainant realleges and incorporates by reference the allegations common to all Counts in this Count.

1. Section 725.151(b) requires the contingency plan to be carried out "immediately whenever there is a fire, explosion or release of hazardous waste or hazardous

waste constituents that could threaten human health or the environment".

2. The hydrogen sulfide emission was a release of hazardous waste or hazardous waste constituents that could threaten human health or the environment within the meaning of Section 725.151(b).
3. Respondent utterly failed to carry out the contingency plan in response to this incident.
4. Among other things, the emergency coordinator failed to:
 - a. Notify local agencies with designated response roles (Section 725.156(a)).
 - b. Identify the amount and areal extent of the release (Section 725.156(b)).
 - c. Assess possible hazards to human health and the environment (Section 725.156(c)).
5. Respondent violated Section 725.151(b).
6. Section 42(a)(3) of the Act provides for a civil penalty of \$25,000 per day for each violation of a Board regulation relating to the RCRA program.

WHEREFORE Complainant prays:

- A. That the Board set this matter for hearing.
- B. That the Board determine that respondent has violated 35 Ill. Adm. Code 725.151(b).
- C. That the Board assess a civil penalty of \$25,000 for the violation.
- D. For such other relief as the Board may determine to be necessary.

COUNT III

FAILURE TO NOTIFY ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Complainant realleges and incorporates by reference the allegations common to all Counts in this Count .

1. Section 725.156(j) requires that, within fifteen days after the incident, the owner or operator must submit a written report on the incident to the Illinois Environmental Protection Agency (Agency).

2. Respondent failed to report the incident to the Agency within fifteen days as required by Section 725.156(j).
3. Respondent violated Section 725.156(j).
4. Section 42(a)(3) of the Act provides for a civil penalty of \$25,000 per day for each violation of a Board regulation relating to the RCRA program

WHEREFORE Complainant prays:

- A. That the Board set this matter for hearing.
- B. That the Board determine that respondent has violated 35 Ill. Adm. Code 725.156(j).
- C. That the Board assess a civil penalty of \$25,000 per day for the violation.
- D. For such other relief as the Board may determine to be necessary.

COUNT IV
FAILURE TO AMEND THE CONTINGENCY PLAN
FOLLOWING FAILURE OF THE PLAN

Complainant realleges and incorporates by reference the allegations common to all Counts in this Count .

1. Section 725.154(b) requires that the owner or operator review and immediately amend the contingency plan when the plan fails in an emergency.
2. The contingency plan failed during the hydrogen sulfide release in the following respects:
 - a. The plan did not specifically address the possibility of an acid spill resulting in a hydrogen sulfide release.
 - b. The plan did not require the ready availability of a hydrogen sulfide meter.
 - c. The plan did not require that responders be familiar with measurement of hydrogen sulfide.
 - d. The plan did not require the availability of respirators for use with hydrogen sulfide.
3. Respondent failed to immediately amend the contingency plan to address the

possibility of an acid spill resulting in a hydrogen sulfide release.

4. Respondent has violated Section 725.154(b).
5. Section 42(a)(3) of the Act provides for a civil penalty of \$25,000 per day for each violation of a Board regulation relating to the RCRA program

WHEREFORE Complainant prays:

- A. That the Board set this matter for hearing.
- B. That the Board determine that respondent has violated 35 Ill. Adm. Code 725.154(b)
- C. That the Board assess a civil penalty of \$25,000 per day for the violation.
- D. That the Board enter an order requiring that Respondent to prepare an amended contingency plan.
- E. For such other relief as the Board may determine to be necessary.

COUNT V
FAILURE TO AMEND THE CONTINGENCY PLAN
IN RESPONSE TO CHANGED CIRCUMSTANCES

Complainant realleges and incorporates by reference the allegations common to all Counts in this Count .

1. Section 725.154(c) requires that the owner or operator immediately amend the contingency plan "if the facility changes ... in a way that materially increases the potential for ... releases of hazardous waste constituents, or changes the response necessary in an emergency."
2. The plan did not specifically address the possibility of an acid spill resulting in a hydrogen sulfide release.
3. Since preparation of the contingency plan, the facility has changed in a way that materially increases the potential for releases of hazardous waste constituents, specifically, the hydrogen sulfide emission incident demonstrated the possibility that an acid spill could result in a release of hydrogen sulfide.
4. Since approval of the contingency plan, the facility has changed in a way that changes the response necessary in an emergency, including the necessity of having a hydrogen sulfide meter available, having personnel trained in the measurement of hydrogen sulfide and having respirators available for use with

hydrogen sulfide.

5. Respondent has not amended the contingency plan.
6. Respondent has violated Section 725.154(c).
7. Section 42(a)(3) of the Act provides for a civil penalty of \$25,000 per day for each violation of a Board regulation relating to the RCRA program

WHEREFORE Complainant prays:

- A. That the Board set this matter for hearing.
- B. That the Board determine that respondent has violated 35 Ill. Adm. Code 725.154(c)
- C. That the Board assess a civil penalty of \$25,000 per day for the violation.
- D. That the Board enter an order requiring that Respondent prepare an amended contingency plan.
- E. For such other relief as the Board may determine to be necessary.

COUNT VI
FAILURE TO CARRY OUT CONTINGENCY PLAN
AS REQUIRED BY THE PLAN

Complainant realleges and incorporates by reference the allegations common to all Counts in this Count.

1. Complainant has obtained a copy of respondent's "Emergency Response and Contingency Plan" ("Plan") from the Champaign County Emergency Services and Disaster Agency ("ESDA"). The plan is dated May, 2001. The most recent revision is to the Call Lists, which were revised October, 2003,
2. Page 6-3 of the plan specifies the duties of "Department Associates ... trained to provide response capabilities within their own department. Due to the experience and knowledge of the chemicals within the departments, they are able to respond appropriately to the threat."
3. Page 6-3 assigns to the department associates the responsibility of "Emergency recognition and determination of the level of spill response involvement".
4. The trained department associates recognized the emergency, and began spill

response.

5. Once the trained department associates recognized the emergency, respondent was required to follow the plan at least to the point of determining that there was no emergency.
6. Respondent failed to make any determination that there was no emergency.
7. Page 6-4 of the plan requires that the plan be implemented when there is "A spill that could cause the release of toxic liquids or fumes".
8. The sulfuric acid spill was a spill that caused the release of toxic fumes.
9. Sulfuric acid is pumped from the bulk chemical storage area to the day tank, which is located under the catwalk, in the immediate vicinity of the spill. Acid is then pumped from the day tank as needed.
10. The day tank normally contains more than 100 gallons of concentrated sulfuric acid, weighing more than 1000 pounds.
11. The sulfuric acid spill "emptied the day tank".
12. Page 6-5 of the Plan defines a "large spill" as involving a quantity in excess of fifty-five gallons.
13. Page 6-10 of the Plan requires reporting of sulfuric acid spills larger than 100 pounds.
14. Respondent failed to report the sulfuric acid spill as required on page 6-10 of the plan.
15. Page 6-6 of the plan requires the separation of incompatible wastes.
16. The spilled sulfuric acid is "RGN 1, Acids, Mineral, Non-Oxidizing". The waste on the floor was "RGN 33, Sulfides, Inorganic".
17. Groups 1 and 33 are listed as incompatible wastes.
18. The emergency coordinator failed to insure that incompatible wastes were segregated and stored in non-adjacent areas, in violation of page 6-6 of the plan.
19. Respondent failed to carry out the plan in response to this spill.
20. Respondent violated Section 725.151(b).

21. Section 42(a)(3) of the Act provides for a civil penalty of \$25,000 per day for each violation of a Board regulation relating to the RCRA program.

WHEREFORE Complainant prays:

- A. That the Board set this matter for hearing.
- B. That the Board determine that respondent failed to carry out its contingency plan in connection with the hydrogen sulfide release incident.
- C. That the Board determine that respondent has violated 35 Ill. Adm. Code 725.151(b).
- D. That the Board assess a civil penalty of \$25,000 for the violation.
- E. For such other relief as the Board may determine to be necessary.

Morton F. Dorothy

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217/384-1010