

Morton F. Dorothy
Morton F. Dorothy, Complainant

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

JUN 23 2005

STATE OF ILLINOIS
Pollution Control Board

MORTON F. DOROTHY,

Complainant,

vs.

FLEX-N-GATE CORPORATION,
an Illinois Corporation,

Respondent.

No. PCB 05-049

**COMPLAINANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO COUNT I**

Complainant Morton F. Dorothy, pursuant to 35 Ill. Adm. Code 101.516(a), moves for partial summary judgment as to Count I of the complaint against respondent Flex-N-Gate Corporation, and as reason says as follows:

1. Par. 1 of Count I of the Complaint alleges:

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. Complainant has attached an affidavit stating that respondent is conducting hazardous waste treatment and storage operations at the Guardian West facility.
3. Respondent has admitted, pursuant to complainant's Request to Admit, that it is treating hazardous waste on-site and that it does not have a RCRA permit or interim status:

Flex-N-Gate admits that it is "a large quantity generator of hazardous waste." Flex-N-Gate admits that it treats some of its hazardous waste "on-site in tanks," but denies that it treats all of its hazardous waste "on-site in tanks." Flex-N-Gate admits that it does not have "a RCRA permit or interim status". To the extent that Request to Admit No. 8 makes any other statements of fact, Flex-N-Gate denies the same. (Response to Request to Admit, par. 8)

4. Respondent has also made the following admission:

Respondent claims exemption from the RCRA permit requirement

pursuant to 35 Ill. Adm. Code 703.123(a) and 722.134(a) with respect to one or more wastes generated by the Guardian West facility. (Response to Supplemental Request to Admit, par. 1)

5. Although respondent admits that it claims exemption from the RCRA permit requirement pursuant to 35 Ill. Adm. Code 703.123(a) and 722.134(a), it has not alleged such exemption in its answer to Count I, and is therefore not allowed to introduce evidence showing compliance with those provisions as a defense to Count I.
6. There is no genuine issue of fact as to Count I.

WHEREFORE complainant prays:

1. That the Board find that there is no genuine issue of fact as to Count I.
2. That the Board find that respondent Flex-N-Gate Corporation is operating a hazardous waste treatment and storage facility without a RCRA permit or interim status, in violation of Section 21(f) of the Environmental Protection Act and 35 Ill. Adm. Code 703.121(a).
3. That the Board grant summary judgment in favor of complainant, and against respondent, as to Count I.
4. That the Board defer ruling as to penalty until the completion of hearings as to the remaining counts of the complaint.

Morton F. Dorothy

Morton F. Dorothy, Complainant

State of Illinois)
) ss
County of Champaign)

AFFIDAVIT

Complainant Morton F. Dorothy makes the following affidavit in support of his motion for partial summary judgment as to Count I:

1. Respondent, Flex-N-Gate Corporation, is conducting hazardous waste treatment and storage operations at the Guardian West facility

2. Respondent has admitted, pursuant to complainant's Request to Admit, that it is treating hazardous waste on-site and that it does not have a RCRA permit or interim status

3. There is no genuine issue of fact as to Count I.

MORTON F. DOROTHY

The undersigned, a notary public in and for the aforesaid County and State, certifies that the above person appeared before me and signed the foregoing document on the 20th day of June, 2005,

B. M. Krall
Notary Public

"OFFICIAL SEAL"
BRADLEY M. KRALL
Notary Public, State of Illinois
My Commission Expires 11/26/06

Morton F. Dorothy
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