

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 11 2006

STATE OF ILLINOIS
Pollution Control Board

MORTON F. DOROTHY,

Complainant,

vs.

FLEX-N-GATE CORPORATION,
an Illinois Corporation,

Respondent.

No. PCB 05-049

CERTIFICATE OF SERVICE

I, the undersigned, certify that, on the 9 day of May, 2006, I served the listed documents, by first class mail, upon the listed persons:

**AMENDED RESPONSE TO INTERROGATORIES
RESPONSE TO REQUESTS FOR PRODUCTION**

Thomas G. Safley
Hodge Dwyer Zeman
3150 Roland Avenue
Post Office Box 5776
Springfield, IL 62705-5776

Carol Webb
Hearing Officer, IPCB
1021 North Grand Avenue East
Post Office Box 19274
Springfield, IL 62794-9274

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

Morton F. Dorothy
Morton F. Dorothy, Complainant

Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801
217/384-1010

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No. PCB 05-049

AMENDED RESPONSE TO INTERROGATORIES

In response to Respondent's Motion to Compel dated April 13, 2006, Complainant Morton F. Dorothy makes the following amended response to Interrogatories propounded by Respondent on January 18, 2006.

1. Complainant does not have detailed information to respond to this question, apart from the documents produced by Respondent in discovery, which are in Respondent's possession, and which are too voluminous to fully summarize. Evidence that Respondent is treating and storing hazardous waste includes the following:
 - a. Respondent has produced a "Contingency Plan" which represents that it was prepared to meet the Board's regulations governing hazardous waste management facilities in 35 Ill. Adm. Code 725. (Response to Request for Production No. 1, p. 6-12)
 - b. On January 19, 2001, The Illinois Environmental Protection Agency conducted a RCRA inspection which found numerous violations of the Board's rules governing hazardous waste management, including rules governing the storage of hazardous waste, and violations of the contingency planning requirements. The Agency contended that, because of the violations, the facility failed to qualify for exemption from the RCRA permit requirement. On May 3, 2001, Respondent answered the Agency with a detailed letter promising to come into compliance with the regulations, without raising any arguments to the effect that the facility was not conducting hazardous waste management operations. (Response to Request for Production No. 13)
 - c. Respondent has produced manifests showing large quantities of hazardous waste shipped out of the facility. (Response to Request for

Production No. 9)

- d. In the course of job training, Complainant was told by Respondent's agent's, in the course of business, that the facility was treating and storing hazardous waste.
 - e. Ken Keigley and Holly Hirschert of the Illinois Environmental Protection Agency have told the Complainant that the facility was conducting hazardous waste treatment and storage operations pursuant to a claim of exemption as a large quantity generator of hazardous waste. Prior to taking her position with the Agency, Holly Hirschert was the environmental engineer for the Guardian West facility, with responsibility over many of these hazardous waste management operations.
 - f. Complainant was required to segregate certain wastes for separate disposal as hazardous waste, including chromic acid contaminated wastes from the area under the catwalk, and from the chromic acid recovery operation, which wastes were placed in containers labeled "hazardous waste", with storage times noted, by the Environmental Manager at Guardian West.
- 2. The Complaint speaks for itself as to the allegation. The question calls for a legal conclusion, and/or requests Complainant's work product. Complainant contends that the material under the catwalk, including liquids, debris and sludge, is hazardous waste. At a minimum, this is chromic acid contaminated waste.
 - 3. Pursuant to a Freedom of Information Act request, Illinois Environmental Protection Agency has told the Complainant that the facility does not have a RCRA permit or interim status. Ken Keigley and Holly Hirschert of the Illinois Environmental Protection Agency have told the Complainant the same thing. Respondent has failed to produce a RCRA permit or interim status notification in response to discovery requests. See also the Response to Question 1. The remainder of the question calls for a legal conclusion, and/or requests Complainant's work product.
 - 4. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
 - 5. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
 - 6. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
 - 7. Complainant generally agrees with this statement. However, Complainant does

not know exactly where the pits are located with respect to the center of the room. Moreover, the pits are actually located to the east and west of the approximate center of the room, and the floor under the tanks appears to be sloped toward the line between the pits, rather than the apparent central point.

8. Complainant agrees that this is a part of the purpose of the slope of the floor.
9. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
10. Complainant generally agrees with this statement. However, the pits were not designed to "hold" the liquid for a significant period of time, but rather to pump the liquid immediately as it accumulated. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question.
11. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
12. Complainant agrees with this statement. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question
13. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
14. Complainant agrees with this statement. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question
15. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
16. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
17. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
18. Complainant agrees with this statement. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question
19. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.

20. As it now stands, the Complaint appears to be restricted to the issue of whether Respondent has violated the storage time requirements for hazardous waste under the catwalk. Under these circumstances, the Complainant will testify as to the properties of the material under the catwalk, and as to the length of storage. In the event Respondent intends to offer testimony to the effect that the area is periodically cleaned, or that the material is not hazardous waste, Complainant will request subpoenas to obtain testimony of employees and former employees, including Larry Kelly, Afiba Martin and Holly Hirschert.
21. Complainant has no funds with which to employ outside expert witnesses. Complainant sees no need at this time for expert testimony. Complainant is, however, an expert on much of the factual material at issue, and will, if necessary, testify as an expert witness. In a citizen enforcement action, the Complainant has a right to testify about relevant matters at a public hearing regardless of qualification as an expert. Any objections would go to the weight of the evidence. Complainant's relevant qualifications include:
- a. Bachelor of Science in Chemistry, with high honors and distinction in the curriculum, University of Illinois, Urbana, Illinois, 1970. Juris Doctor, 1976.
 - b. Between 1980 and 1993, Complainant drafted the Illinois versions of most of the regulations involved in this case.
 - c. Between 1980 and 1993, Complainant handled public questions concerning these regulations for the State of Illinois.
 - d. Complainant attended numerous conferences and hearings concerning the subject of hazardous waste management, both as an attendee and speaker.
 - e. Complainant drafted numerous documents and reports concerning hazardous waste, including the Annual Reports to the Governor of the Illinois Hazardous Waste Advisory Council.
 - f. Complainant is a certified "HAZWOPER" first responder for hazardous waste emergencies.
 - g. Complainant did process and quality control chemistry for the subject plating line for nearly two years, during which time he was regularly consulted by management concerning the operation and control of the plating process.
22. Other persons:

- a. Tanvir Ali, Plant Manager, Guardian West, 601 Guardian Drive, Urbana IL 61802
- b. Ken Keigley, Holly Hirschert, Bill Child, Illinois Environmental Protection Agency, 2125 South First Champaign IL
- c. Bill Keller, Champaign County Emergency Services and Disaster Agency, 1905 East Main Urbana IL 61802
- d. Unknown person, Urbana Fire Department, 400 S. Vine, Urbana, IL 61801
- e. Mr. Thomas V. Skinner, Gary Westefer, US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604
- f. Matt Dunn, Chris Perzan, Illinois Attorney General, 500 S. 2nd, Springfield, IL 62706

23. No persons have assisted Complainant.

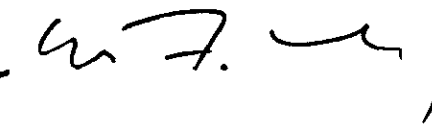
24. Complainant has claimed privilege in response to several of the above questions.

Morton F. Dorothy 
Morton F. Dorothy, Complainant

VERIFICATION

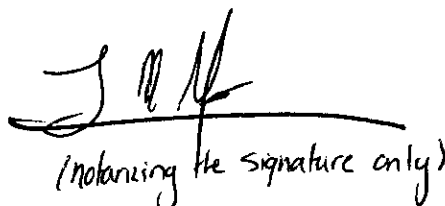
STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

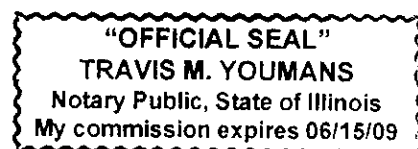
Morton F. Dorothy, being first duly sworn on oath, deposes and states, under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth above in response to Respondent's Interrogatories are true and correct, except as to matters herein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Morton F. Dorothy 
Morton F. Dorothy, Complainant

Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801
217/384-1010

SUBSCRIBED + SWORN TO THIS 9th DAY OF MAY, 2006


(Notarizing the signature only)



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vs.)
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FLEX-N-GATE CORPORATION,)
an Illinois Corporation,)
)
Respondent.)

No. PCB 05-049

RESPONSE TO REQUESTS FOR PRODUCTION

Complainant Morton F. Dorothy makes the following response to the Request for Production propounded by Respondent on January 18, 2006.

1. None
2. None
3. None
4. None
5. None
6. Correspondence with Agency, USEPA and other government agencies:
 - a. 8/28/04, Bill Keller, ESDA
 - b. 8/31/04, Carolyn Wright, Agency
 - c. 9/1/04, Bill Keller, ESDA
 - d. 9/2/04, OSHA
 - e. 9/2/04, Jan Ogden, Agency
 - f. 9/3/04, Ken Keigley, Agency
 - g. 9/8/04, Peggy Zweber, OSHA
 - h. 9/10/04, Peggy Zweber, OSHA
 - i. 9/17/04, Peggy Zweber, OSHA
 - j. 10/4/04, Peggy Zweber, OSHA
 - k. 10/4/04, Peggy Zweber, OSHA
 - l. 10/12/04, Bill Keller, ESDA
 - m. 10/25/06, Sue Ellen DeManche, OSHA
 - n. 10/27/04, Peggy Zweber, OSHA

- o. 10/27/04, Peggy Zweber, OSHA
 - p. 11/8/04, Bill Keller, ESDA
 - q. 11/30/04, Brian Bothast, OSHA
 - r. 4/24/05, Ken S. Welch, Occupational Safety & Health Review Commission
 - s. 10/29/05, Tom Skinner, USEPA
 - t. 10/29/05, Bill Child, Agency
 - u. 10/29/05, Matt Dunn, Illinois Attorney General
 - v. 1/9/06, Chris Perzan, Illinois Attorney General
 - w. 2/13/06, Matt Dunn, Illinois Attorney General
7. See 6
8. See 6
9. None other than documents produced by Respondent.
10. None other than documents produced by Respondent
11. None other than documents produced by Respondent
12. None other than documents produced by Respondent
13. None other than documents produced by Respondent

Morton F. Dorothy, Jr.
Morton F. Dorothy, Complainant

VERIFICATION

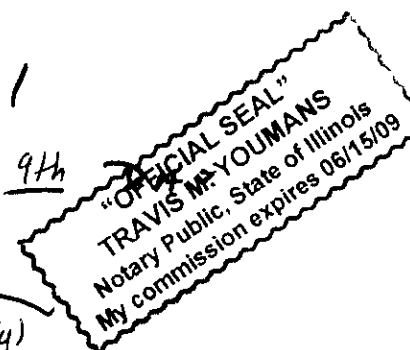
STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

Morton F. Dorothy, being first duly sworn on oath, deposes and states, under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth above in response to Respondent's Requests for Production are true and correct, except as to matters herein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Morton F. Dorothy, Jr.
Morton F. Dorothy, Complainant

SUBSCRIBED + SWORN TO BEFORE ME THIS 9th
OF MAY, 2006

[Signature]
(notarizing the signature only)



Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801
217/384-1010

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

August 28, 2004

Bill Keller
Champaign County ESDA
1905 East Main
Urbana IL 61802

Dear Mr. Keller:

This is a request pursuant to the Freedom of Information Act, 5 ILCS 140.

This request concerns the Guardian West facility, 601 Guardian Drive, Urbana, Illinois. 35 Ill. Adm. Code 725.151 requires that this facility prepare a "contingency plan" to deal with releases of hazardous waste or constituents. This plan could be contained within a similar OSHA-required plan. Section 725.153(b) requires that copies of the plan be submitted to local emergency response teams. The Urbana Fire Department has told me that I should direct my information request to your office.

I need to examine or obtain a copy of the contingency plan for the Guardian West facility,

On or about August 7, 2004, a sulfuric acid spill at the Guardian West facility resulted in a release of hydrogen sulfide gas from waste that had accumulated on the floor under the spill. Was this release reported to your office? Has a written incident report been received or prepared?

Section 725.154 requires that the owner or operator amend the contingency following a failure of the plan. Has Guardian West amended its contingency plan in response to the failure of the plan with respect to the hydrogen sulfide release?

Sincerely,

Morton F. Dorothy



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

8/31/2004

Morton Dorothy

804 East Main
Urbana, IL 61802

Re: FREEDOM OF INFORMATION ACT (FOIA) REQUEST - OER # 0006268

This letter is in response to your request for public records pursuant to the Freedom of Information Act ("FOIA") (5 ILCS 140/1 et.seq.) processed by the Office of Emergency Response.

Your request was received: 8/27/2004.

You requested information about: 601 Guardian Drive, Urbana, Champaign County.

We searched the databases which index our files for information matching your request. That search identified the following file(s): 20010070.

After reviewing the Illinois EPA's files, and pursuant to Section 7 of FOIA and 2 Il. Adm. Code 1828.202, the Illinois EPA has determined that some of the public records identified relative to your request are exempt from disclosure under FOIA. A list of these public records which are exempt from disclosure are identified in Attachment A. The remaining public records which are not exempt from disclosure are enclosed.

Pursuant to 2 Il. Adm. Code 1828.505, you may appeal the denial to disclose some of the public records requested by sending a written notice of appeal to the Director of the Illinois EPA, postmarked within thirty (30) days of the date of this letter.

Please contact me at 217/785-0830 for further assistance.

Sincerely,

Carolyn Wright
FOIA Coordinator
Office of Emergency Response

cc: Enclosure(s)

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

Attachment A
LIST OF REDACTED/EXEMPT DOCUMENTS

I have reviewed the documents in the files of Office of Emergency Response of the Illinois Environmental Protection Agency:

A. Consistent with the obligations of the Agency under 2 Ill. Adm. Code 1828 and Section 7 of the Environmental Protection Act (415 ILCS 5/7 (2001)), I have removed the following documents, or portions of documents, from the publicly releasable portion of this file: 20010070 in/near: Urbana

Document Date	General Description of Document	* Reason Redacted	* Reason Exempt (Withheld)
NA	IEMA Incident ID	2,3	
4-2-01	J.O'Brien → P. Purseglove memo		2,3

Or: B. Nothing was redacted/exempt (withheld): ☐

*Reasons for redacted/exempt (withheld)

1. Information privileged against introduction in judicial proceedings, 2 Ill. Adm. Code 1828.202(a)(1)(L).
2. Investigatory records compiled for enforcement purposes, 2 Ill. Adm. Code 1828.202(a)(1)(C).
3. Internal communications of the Agency that are preliminary drafts, notes, recommendations, memoranda, and/or other records in which opinions are expressed, 2 Ill. Adm. Code 1828.202(a)(1)(E).
4. Information which, if disclosed would constitute a clearly unwarranted invasion of personal privacy (i.e., the identity of persons who make oral or written complaints or provide information to the Agency), unless such disclosure is consented to in writing by the individual subjects of such information, 2 Ill. Adm. Code 1828.202(a)(1)(B).
5. Information determined to constitute trade secret(s) or confidential business, 2 Ill. Adm. Code 1828.202(a)(1)(F).
6. Information determined to constitute security sensitive document(s), 2 Ill. Adm. Code 1828.202(J).

Office of Emergency Response signature: Carolyn Wright Date: 8-31-04
Date of last document reviewed: 4-6-01 Updated:

INCIDENT
STATUS
SUMMARY

2	0	0	1	0	0	7	0
---	---	---	---	---	---	---	---

IEMA INCIDENT ID

City Urbana PRP Guardian West

County Champaign

Initial Evaluation

EXEMPT IN PART
Reviewer CSW Date 8-31-04

1. ☒ Actual () Potential
2. ☒ On Site () Off Site () Transportation
3. () Air () Storm Sewer
() Surface Water () Sanitary Sewer
() PWS () Inside Building
☒ Soil/Ground Water () Impervious Surface
4. () Abandoned Material () HWF () CSA () LUST
() Open Burning Permit () Oil Production
() Agricultural
() PCB
5. () Immediate IEPA on-scene response by: _____

Initial Evaluation Date 1/17/01 By REF

FAXED TO REGION _____

() Referral to:

() LUST () BOA (☒ BOL () BOW

*****ASSOCIATED FILES*****

() See VN File E- _____

() See Enforcement File _____

DB

**Incident**

EM/2000

Incident Recorder

Illinois HazMat Report Incident #: H 2001 0070

Entered by Hugo Sullivan on 01/16 at 09:36

Incident Type: Illinois HazMat Report

Data Input Status: ☐ Open ☒ CloseIncident Level: ☒ Main Incident ☐ Sub-Incident

1. Caller: JACKIE CHRISTENSEN	14. On Scene Contact: JACKIE CHRISTENSEN
2. Call back phone#: 217/278-2435	On Scene Phone #: 217/278-2435
3. Caller Represents: GUARDIAN WEST	15. No. Injured: NONE
4. Type of Incident: LEAK OR SPILL	Where Taken:
5. Incident Location Street: 601 GUARDIAN DRIVE City: URBANA IN County: CHAMPAIGN Milepost: Sec.: Twp.: Range:	16. Public health risks and/or precautions taken, including # evacuated: NONE
6. Area Involved: FIXED FACILITY	17. Assistance needed from State Agencies: NONE
7. Material (s) Involved: ACETONE/TOLUENE/AUTO PAINT MIXTURE Material Type: LIQUID CAS#: UNK UN/NA#: 1090 (ACETONE) 1294 (TOLUENE) 1263 (PAINT RELATED MIXTURES) Is this a 302 (a) Extremely Hazardous Substance? NO Is this a RCRA Hazardous Waste? YES Is this a RCRA regulated facility? YES	18. Containment/cleanup actions and plans: CONTRACTOR TO BE HIRED 19. Weather: OVERCAST Temp.: 35 deg. f/ Wind Dir. UNK / Speed UNK m.p.h.
8. Container: DRUM Container Size: 55 GALS.	20. Responsible Party: GUARDIAN WEST Contact Person: JACKIE CHRISTENSEN Phone #: 217/278-2435 Mailing Address: P.O. BOX 877, URBANA, IL 61803
9. Amount Released: 40 GALS. Rate of Release: /min.	
10. Cause of Release: FORK LIFT PUNCTURED DRUM	
11. Estimated Spill Extent: 150-200 SQUARE FEET	Notification : IEPA/OSFM/REGION 7
12. Occurred - Date: Time: Discovered - Date: 01/12/2001 Time: 16:00	
13. Emergency Units Contacted - NONE Fire: - Police: - Sheriff: - ESDA: -	On Scene - NONE Fire: - Police: - Sheriff: - ESDA: -



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

THOMAS V. SKINNER, DIRECTOR

March 8, 2001

Jackie Christensen
Guardian West
P O Box 877
Urbana, IL 61803

Incident Verification Letter
Re: 20010070

Dear Ms. Christensen:

On January 16, 2001, this office received information that you or an organization that you represent were involved in an environmental incident that occurred at or near 601 Guardian Dr on or before January 12, 2001. Our records currently indicate the release of 40 gallons of paint related materials.

Your assistance is requested in confirming, correcting and completing the public records regarding the circumstances of this incident. Include with your submission all of the following:

- ☐ a description of the incident circumstances
- ☐ any mitigation actions taken at the time of the release
- ☐ a description of additional cleanup which has taken place or is planned
- ☐ if cleanup and disposal have not been completed when you submit the report, include with this report an estimated time schedule for completing such actions. Upon completion, please submit a final report showing how cleanup and disposal were done
- ☐ Please reply within thirty (30) days from receipt of this letter. Make your reply to Illinois Environmental Protection Agency, Emergency Response Unit, Mail Drop #29, P.O. Box 19276, Springfield, IL 62794-9276.

Please refer to the incident number in all correspondence on this incident. Should you have any questions concerning the incident verification please contact the undersigned at 217/782-3637.

Sincerely,

A handwritten signature in cursive script that reads "Ralph E. Foster".

Ralph E. Foster, Senior Emergency Responder
Emergency Operations Unit

GEORGE H. RYAN, GOVERNOR



April 6, 2001

Certified Mail 7099 3400 0007 3058 9806

RECEIVED

APR - 9 2001

IEPA
Office of Emergency Response

Mr. Ralph E. Foster
Illinois Environmental Protection Agency
Emergency Response Unit, Mail Drop # 29
P.O. Box 19276
Springfield, IL 62794-9276

RE: Incident 20010070

Dear Mr. Foster,

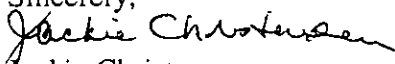
I am supplying the requested information for the release of approximately 40 gallons of paint related materials on property of Guardian West, 601 Guardian Drive, Urbana, IL 61802. The exact date of the release is unknown but most likely occurred between January 5, 2001 and January 12, 2001.

A drum containing solvent and paint wastes was punctured by a forklift, near the bottom of the drum. The released material flowed along a paved area and into the grassy area and down a slight slope. The ground was frozen and there was a cover of snow on the ground during the time frame of the incident. The snow was stained a light pinkish color.

On January 15, 2001 the drum was overpacked to prepare for disposal of the container. A trench was dug at the bottom of the slope and absorbent socks placed in the trench to prevent runoff during a thaw.

On February 8, 2001, Bodine Environmental Services performed clean up of the area. The pavement was power washed and the water recovered for disposal. Eight drums were sent out under manifest IL9352476 to PCI for disposal. Approximately 50 cubic yards of soil were excavated and placed in roll-off boxes. The cavity, approximately 50 feet by 20 feet, was tested during excavation using a PID. Soil samples were also tested as required for profiling into PDC, Area I, Peoria, IL. The soil will be transported to the landfill during the week of April 16th, 2001.

If you need additional information, please contact me at 217-278-2435.

Sincerely,

Jackie Christensen
Environmental Manager

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

September 1, 2004

Bill Keller
Champaign County ESDA
1905 East Main
Urbana IL 61802

Dear Mr. Keller:

Thank you for your prompt response to my August 28, 2004, request for information concerning the contingency plan for the Guardian West facility.

This is to confirm that I have received from you this day a copy of the "Emergency Response and Contingency Plan" for the Guardian West facility, dated May, 2001, with the most recent revision dated October, 2003.

This is also to confirm your statement that you have received no incident report concerning the sulfuric acid spill and hydrogen sulfide release incident that happened on or about August 7, 2004.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

September 2, 2004

U.S. Dept. of Labor
OSHA
2918 W. Willows Knolls Rd
Peoria IL 61614

Re: Guardian West, Urbana, Illinois

Dear OSHA:

This letter concerns the Guardian West facility, 601 Guardian Dr., Urbana, IL.

I worked at Guardian West as a lab tech on the plating line from November, 2002, to August, 2004. My employment was terminated on August 13, 2004, following a hazardous substance release incident. I have attached a narrative account of the incident.

Guardian West is a large quantity generator of hazardous waste. US and Illinois EPA rules require it to maintain a contingency plan to deal with hazardous waste releases. I believe OSHA rules also require similar contingency plans.

This incident started about 4 a.m. on August 5, 2004, when a sulfuric acid pipe broke, spilling concentrated sulfuric acid onto the floor under the plating tanks. The acid began reacting with waste on the floor, producing hydrogen sulfide, a toxic gas.

The spill is believed to have "emptied the day tank" of sulfuric acid. This tank is located under the catwalk. I believe it normally contains more than 100 gallons of concentrated sulfuric acid, weighing more than 1000 pounds.

I have received 24-hour OSHA "hazwoper" training. This training was administered by the Guardian West Safety Office. My understanding is that I was to contact the safety officer in the plant and begin taking immediate response. Because I was the employee that was most familiar with the plating chemicals and their properties, I was expected to then assist safety and other responders.

I had safety paged as soon as I became aware of the release. I asked safety to get a hydrogen sulfide probe. Safety responded that he did not know what a hydrogen sulfide probe was, and did not know whether we had one. I replied that the Urbana Fire

Department had one. I re-explained the potential seriousness of the situation, and suggested that he needed to consider evacuation of the area. Safety suggested that people be kept back from the immediate area. He asked if fans would help. I said we had none.

Safety then departed. I believed he had gone to find a hydrogen sulfide probe, and to arrange for fans. I later saw him the other end of the plant apparently attending to routine matters. Safety did not return to the spill site while I was involved in the response. If safety, or anyone else, made a determination that the hydrogen sulfide levels were safe, they did not communicate that finding to me.

I laid out water hoses to dilute the spill and wash the waste toward the sump, to be pumped to the hazardous waste treatment unit. When maintenance arrived to repair the spilled acid pipe, I told them that, since the acid was no longer leaking, and since we had no immediate need for the acid line, they should not attempt to repair it until we were certain that the gas levels were safe. Since I was sick from the gas, I left the building for fresh air. Other workers in the area reported being sickened and also left.

Two days later I was "written up" because of my decision to delay the repair of the pipe, and because I left the lab to respond to the spill. This led to termination of my employment a few days later.

Champaign County ESDA provided me with a copy of the current contingency plan for this facility. Guardian West failed to carry out any portion of the contingency plan. Safety failed to notify the emergency coordinator, and failed to take over the response from me. Nor was any effort made to identify the amount and extent of the release.

Because the contingency plan failed in this emergency, Guardian West is required to amend the plan to address the failure. The Champaign County ESDA office has told me that, as of September 1, 2004, they had not received an incident report or an amended contingency plan from Guardian West.

The plan does not specifically address the possibility of a hydrogen sulfide release. I believe the process may have changed so as to create a new risk due to the introduction of a new chemical additive, "HSA -90" ("high sulfur additive-90"). Another possibility is that Guardian West has allowed sludge beds to accumulate in the sump area, and that the sulfate in these sludges has undergone chemical or biological conversion to sulfide.

The contingency plan needs to be amended to address the possibility of this type of hydrogen sulfide release. The plan needs to require the availability of a hydrogen sulfide meter, and to require the safety office to be trained in its use.

Now that Guardian West has had a hydrogen sulfide release incident, they need to measure for hydrogen sulfide before confined space entry, especially the tank in

which the HSA-90 is being used (Tank 20).

At the OSHA 24-hour training that I received, I was told that I was expected to respond to this type of a release. I believe that Guardian West's position that I should not have taken action violated the contingency plan and OSHA rules.

My immediate supervisor was Sheryl Drake, the team leader for the plating lab. She also received the 24-hr OSHA training. In her handling of this incident she did several things that demonstrate a total lack of appreciation for emergency response. Her position that I should have stayed in the lab, working alone in an isolated location after detecting a toxic gas release is reckless, if not homicidal. Her attitude toward the advisability of sending maintenance men in without an all clear is also reckless. Her attitude that I should not have responded at all shows that, had the incident happened on her shift, she would have refused to respond. At a minimum, Sheryl Drake, needs to be required to repeat the OSHA 24-hour training.

I would appreciate it if OSHA would visit this site to determine if the contingency plan and OSHA rules have been followed in connection with this incident. I would be happy to meet with you to discuss the matter, or to provide more information.

Sincerely,

Morton F. Dorothy



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

September 2, 2004

Mr. Morton Dorothy
804 East Main
Urbana, IL 61802

RE: Freedom of Information Act Request
L0191055145-Champaign/Guardian West

Dear Mr. Dorothy:

This letter is in response to your Freedom of Information Act ("FOIA") (5 ILCS 140/1 et seq.) request received by the FOIA sector, Bureau of Land, at the Illinois Environmental Protection Agency ("Illinois EPA") on August 27, 2004.

After reviewing the Illinois EPA's files, and pursuant to Section 7 of FOIA and 2 Ill. Adm. Code 1828.202, the Illinois EPA has determined that some of the public records requested are exempt from disclosure under FOIA. Attached is a list of the public records, which are exempt from disclosure. The public records, which are not exempt from disclosure, are enclosed.

Copied: 65 pages paper

Pursuant to 2 Ill. Adm. Code 1828.505, you may appeal the denial to disclose some of the public records requested by sending a written notice of appeal to the Director of the Illinois EPA, postmarked within thirty (30) days of the date of this letter.

If you have any questions concerning this matter, please contact me at (217) 782-9878.

Sincerely,

Jan Ogden, FOIA Coordinator
Records Management Unit
Bureau of Land

JO:alt

Documents Exempt from Public Disclosure

File No. L 0 1 9 1 0 5 5 1 4 5 County CHAMPAIGN

Facility Name GUARDIAN WEST

The following documents have been removed and have been placed in a file folder marked "Documents Exempt from Public Disclosure."

Document Date	Specific Description Of Document	Exempt Cat. Pursuant To	Review Date And Initials
✓ 1. 01/17/2001	DLP COMPLAINT	[01] 1828.202(a)(1)(B)(i)	04-03-2001 md
✓ 2. 01/18/2001	CONTINGENCY PLAN	[08] 1828.202(a)(1)(C)(vi)	10-24-2002 md
✓ 3. 08/27/2001	CONTINGENCY PLAN	[08] 1828.202(a)(1)(C)(vi)	10-24-2002 md
✓ 4. 08/29/2001	CONTINGENCY PLAN	[08] 1828.202(a)(1)(C)(vi)	10-24-2002 md
✓ 5. 11/05/2001	EMERGENCY RESPONSE PLAN	[08] 1828.202(a)(1)(C)(vi)	10-24-2002 md
6. 10/2003	CONTINGENCY PLAN	[01] 1828.202(a)(1)(C)(vi)	04-14-2004 md
7.		[] 1828.202(a)(1))
8.		[] 1828.202(a)(1))
9.		[] 1828.202(a)(1))
10.		[] 1828.202(a)(1))
11.		[] 1828.202(a)(1))
12.		[] 1828.202(a)(1))
13.		[] 1828.202(a)(1))
14.		[] 1828.202(a)(1))
15.		[] 1828.202(a)(1))
16.		[] 1828.202(a)(1))
17.		[] 1828.202(a)(1))
18.		[] 1828.202(a)(1))
19.		[] 1828.202(a)(1))
20.		[] 1828.202(a)(1))

Pursuant to 2 ILL. Adm. Code 1828.505, you may appeal the denial to disclose some or all of the public records requested by sending a written Notice Of Appeal to the Director of the Illinois EPA, post marked within thirty (30) days of the date of the denial letter.

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

September 3, 2004

Mr. Ken Keigley
Illinois EPA
2125 South First
Champaign IL 61820

Re: Guardian West, Urbana, Illinois

Dear Mr. Keigley:

This letter concerns the Guardian West facility, 601 Guardian Dr., Urbana, IL.

I have attached a copy of the Emergency Response and Contingency Plan for the above facility. Champaign County ESDA gave me this copy on September 1, 2004. The copy is dated May, 2001, and was last revised in October, 2003.

I have also attached a narrative account of the acid spill/hydrogen sulfide release of August 5, 2004.

In our conversation of September 2, you indicated that Guardian West is now denying that a hydrogen sulfide release took place. Your statement is the first indication that I have had that Guardian West is denying that a hydrogen sulfide release took place. In all of my discussions with them up to this time, nobody has claimed that I was wrong about the hydrogen sulfide.

I became dizzy, disoriented and nauseated from the gas. The solution attendant Joseph reported the same thing to me. Several of the workers in the load/unload area also reported being sickened, and were allowed to go to the break room to get away from the gas.

You shouldn't let Guardian West place the burden of proof on the Agency in this situation. All the information that was available to Guardian West at the time of the incident indicated that a hydrogen sulfide release was taking place. They were obligated to carry out the contingency plan, which required them to assess the nature and extent of the release. The rules would be meaningless if the operator were able to get away with "we failed to assess the nature and extent of the release so therefore it never happened."

This incident began around 4 am on the morning of August 5, 2004. The people who were present were Afiba Martin, Joseph, the safety officer and myself. Afiba, Joseph and the safety officer made statements to me at the time that demonstrated that they did not understand what was happening. On the other hand, I have a degree in chemistry, and have dealt with hydrogen sulfide before. There were no other witnesses. Guardian West can hire a thousand experts to argue that it wasn't hydrogen sulfide, but they weren't there. I was there, I smelled it, I know what hydrogen sulfide smells like and I am the only one qualified to testify.

On page 6-4 of the Contingency Plan, I was a "Department Associate trained to provide response capabilities within their own department". This is why I was sent to OSHA 24-hour training. My responsibilities included "Emergency recognition and determination of the level of spill response involvement". I made the call that there was a hydrogen sulfide release, and nobody said I was wrong at the time. My determination, right or wrong, required that the contingency plan be carried out. If management wanted to contradict this, they should have taken steps "to assess the nature and extent of the release".

My immediate supervisor was Sheryl Drake. When she came in on the morning of August 5, I heard her explaining the situation to the first shift. Larry Kelly asked her why a sulfuric acid spill smelled like that, sulfuric acid didn't smell like that. Sheryl explained to Larry that the acid was reacting with something on the floor to produce hydrogen sulfide. At that time she clearly agreed with me.

As to the volume of the spill, I was later told that the spill "emptied the day tank" of sulfuric acid. This tank is located under the catwalk. I believe it normally contains more than 100 gallons of concentrated sulfuric acid, weighing more than 1000 pounds. The reportable quantity listed on page 6-10 of the plan is 100 pounds.

Nobody actually saw the acid leaking since the leak had stopped before we found it. A joint in a plastic pipe with a diameter of 1.5 to 2 inches had separated. The pipe was pointing upwards, with the separation near the top of the tank, somewhere near Tank 8. The acid completely cleaned the corrosion off the bare conductor bars near the tank. This showed that the spray was more than three feet wide near the separation, and that it continued for long enough to clean the heavily corroded conductors to bare metal.

Another puzzle is the source of the sulfide. The plan does not specifically address the possibility of a hydrogen sulfide release, which I did not myself foresee as a risk. I believe the process may have changed so as to create a new risk due to the recent introduction of a new chemical additive, "HSA -90" ("high sulfur additive-90") which includes reduced forms of sulfur. Another possibility is that Guardian West has allowed sludge beds to accumulate in the sump area, and that the sulfate in these sludges has undergone chemical or biological conversion to sulfide.

The concrete pad under the tanks, where the spill occurred, has never been

cleaned in the last two years. The sludge beds are never removed. There is standing water down there even after a two-week shut down.

Sincerely,

Morton F. Dorothy

U.S. Department of Labor

Occupational Safety and Health Administration
2918 Willow Knolls Road
Peoria, Illinois 61614

PH: (309) 589-7033
FAX: (309) 589-7326



September 8, 2004

Morton Dorothy
804 East Main
Urbana, IL 618022822

Re: Guardian West
Complaint No. 204985014

Dear Mr. Dorothy:

The purpose of this letter is to acknowledge receipt of your formal complaint and to inform you that an inspection of the workplace will be scheduled as soon as possible, in accordance with the priorities established by the agency. You will be informed of the results of our inspection when they are available.

Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity. If you believe you are being treated differently or action is being taken against you because of your safety or health activity, you may file a complaint with OSHA. You should file this complaint as soon as possible, since OSHA normally can accept only those complaints filed within 30 days of the time you learn of the alleged discriminatory action.

Thank you for your interest in workplace safety and health.

Respectfully,

for


Peggy A. Zweber
Area Director

js

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

September 10, 2004

Peggy A. Zweber, Area Director
U.S. Dept. of Labor, OSHA
2918 W. Willows Knolls Rd
Peoria IL 61614

Re: Guardian West, Urbana, Illinois

Dear Ms. Zweber:

Thank you for your response of September 8, 2004.

As I indicated in my letter of September 2, 2004, I was "written up" because of my decision to delay the repair of the pipe, and because I left the lab to respond to the spill. This led to termination of my employment on August 13, 2004. I believe I was discriminated against because I followed the contingency plan and OSHA rules. I believe action was taken against me because I followed OSHA requirements. Please treat this and my earlier letter as a formal complaint about discriminatory action in violation of Section 11(c) of OSHA.

Having thought about this for another week, I would like to add one point to my prior letter. My immediate supervisor was Sheryl Drake. Her actions in "writing me up" for responding to the spill could be explained on the basis that she believed that I was supposed to respond only to spills in the lab, not to spills on the line. If this is her position, it contradicts what I was told in the OSHA 24-hour training I received. I was told that I was expected to respond to spills on the line, mainly because the lab tech is usually the only person with the specialized knowledge of the identity and properties of the chemicals used on the line. In addition, the team leader on the line, who had also received OSHA 24-hour training, specifically asked me to assist him.

Thank you for your assistance in this matter.

Sincerely,

Morton F. Dorothy

U.S. Department of Labor

**Occupational Safety & Health Administration
Peoria Area Office
2918 Willow Knolls Road
Peoria, IL 61614
(309) 671-7033
Fax: (309) 671-7326**



September 17, 2004

Morton F. Dorothy
804 East Main
Urbana, IL 61802-2822

Dear Mr. Dorothy:

This is to confirm that we received your complaint on September 13, 2004.

The complaint has been administratively closed by this office. As discussed during our telephone conversation on September 15, 2004, your complaint does not allege activity protected under 29 CFR 1977.15, §11(c) of the OSHA Act.

Any disagreement with this determination must be communicated to this office as soon as possible. If any further assistance is needed, please do not hesitate to call or write.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peggy Zweber".

for Peggy Zweber
Area Director

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

October 4, 2004

Peggy A. Zweber, Area Director
U.S. Dept. of Labor, OSHA
2918 Willows Knolls Rd
Peoria IL 61614

Re: Guardian West, Urbana, Illinois
OSHA Complaint No. 204985014

Dear Ms. Zweber:

Thank you for your letter of September 24, 2004, together with fax of September 14, 2004 from Guardian West to OSHA, and memorandum to Guardian West employees dated September 10(?), 2004.

The fax is not signed. I don't think I should be required to answer claims that are not even signed. OSHA needs to back up and require that Guardian West provide a signed copy.

It appears that OSHA has required Guardian West to post a notice to employees that OSHA has received a complaint. This notice contains several factual errors, which are listed and discussed in the attached document. The first problem is that Guardian West has falsely characterized the nature of the complaint. The second problem is that Guardian West has used the notice as a platform to make false statements about the incident.

I am uncertain as to OSHA's rules as to this notice. At a minimum you need to require them to post the notice again with a correct characterization of the complaint:

That there was an acid spill which reacted with hazardous waste on the floor, causing a release of a toxic gas, hydrogen sulfide, and that Guardian West failed to follow the contingency plan and related rules in responding to the incident.

Beyond this, I do not believe that Guardian West should be allowed to use the OSHA-required notice as a platform to make false statements. At a minimum they should preface these statements with language such as "Guardian West denies that there was a hydrogen sulfide release," so that employees would not construe the statements as

OSHA findings.

As to the substance of the statements made in the notice and fax, it appears that Guardian West is denying that the gas release took place, is claiming that the spill was of dilute acid from the discharge pipe from tank 8, and is claiming that they do not have chemicals capable of producing hydrogen sulfide. These statements are false, as discussed in the attachment.

Guardian West has also made a number of false statements in these documents about me personally. I do not believe these are relevant to the OSHA complaint, and will not answer them at length, unless you request that I do so. These statements do, however, reflect negatively on the credibility of Guardian West's other assertions.

I have filed a formal complaint with the State alleging violation of the environmental rules related to this incident. If OSHA is able to move quickly to remedy this situation, I will withdraw that portion of the environmental complaint.

I have attached the following documents:

1. A short outline of the false statements, with a short response.
2. A copy of the Contingency Plan provided to me by ESDA.
3. A copy of my formal complaint to the State concerning the violation of environmental rules.

Sincerely,

Morton F. Dorothy

RESPONSE TO MEMO AND FAX OF SEPTEMBER 2004

The following points relate to the "memorandum" to Guardian West employees apparently dated September 10, 2004, and faxed to OSHA on September 14, 2004.

4. "The complaint was that we had a Hazardous Waste spill..."
 - a. The complaint did not allege a "hazardous waste spill". The complaint was that there was an acid spill that reacted with hazardous waste on the floor to produce hydrogen sulfide gas, and that Guardian West failed to follow the contingency plan and related rules in responding to the spill and release.
5. "We did not have ... a release of hydrogen sulfide gas at any time."
 - a. There was a hydrogen sulfide release at about 4 a.m. on the morning of August 5, 2004
 - b. I am a qualified expert in this area, and am prepared to testify that there was a release of hydrogen sulfide. Do they have any qualified witnesses that could testify otherwise?
6. "We did have a break in one of the discharge pipes in the chrome plating department tank #8 which has a diluted sulfuric acid content..."
 - a. The break was on the pipe used to add concentrated sulfuric acid to the tank, not on a discharge pipe.
 - b. The pipe that broke contained concentrated sulfuric acid.
 - c. This was my analysis of the situation at the time, which was confirmed by all my discussions with plant personnel up to the time I was suspended..
7. "We do not have any chemicals that would produce hydrogen sulfide gas."
 - a. Guardian West has started using a new chemical "HSA (High Sulfur Additive) -90" in Tank 20.
 - i. This chemical contains reduced sulfur, and may be capable of generating hydrogen sulfide. I was terminated from my employment at Guardian West before I was able to test this chemical to see if it was the cause of this release.
 - b. Guardian West allows waste to accumulate for an indefinite time period in the sump area under the catwalk.

- i. It is possible that the sulfate waste in that area has undergone chemical or biological conversion to the sulfide form, and is therefore capable of evolving hydrogen sulfide.

- c. The acid spill on August 5, 2004, in fact produced hydrogen sulfide.

The following points relate to the fax sent to OSHA and dated September 14, 2004.

1. The fax has not been signed.
 - a. I do not feel that I should be required to answer unsigned allegations which Guardian West can at a later date deny having made.
2. "Guardian West did not have ... a release of hydrogen sulfide gas on August 5, 2004."
 - a. There was a hydrogen sulfide release at about 4 a.m. on the morning of August 5, 2004
 - b. I am a qualified expert in this area, and am prepared to testify that there was a release of hydrogen sulfide. Do they have any qualified witnesses that could testify otherwise?.
3. "We did have a pipe break in our plating department, which contained a diluted sulfuric acid content,..."
 - a. The pipe that broke contained concentrated sulfuric acid.
 - b. This was my analysis of the situation at the time, which was confirmed by all my discussions with plant personnel up to the time I was suspended..
4. "(W)e have received threat letters"
 - a. I have not written any "threat letters".
 - b. All of my communications with Guardian West since I was suspended have been in writing and can be provided if requested.
5. "(W)e have received threat letters ... that he would make it difficult for Guardian West by calling the local and federal agencies."
 - a. Although I have in fact contacted these agencies, I at no time stated or threatened that I would do so..
 - b. All of my communications with Guardian West since I was suspended

have been in writing and can be provided if requested.

6. "(W)e have received threat letters that if we did not hire this employee back he would make it difficult for Guardian West ..."
 - a. I have not at any time asked to be hired back..
 - b. All of my communications with Guardian West since I was suspended have been in writing and can be provided if requested.
7. "We have not had any spills or releases."
 - a. This is a false statement.
 - b. Guardian West admits that there was a spill earlier in the same document.

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

October 4, 2004

Peggy A. Zweber, Area Director
U.S. Dept. of Labor, OSHA
2918 Willows Knolls Rd
Peoria IL 61614

Re: Guardian West, Urbana, Illinois

Dear Ms. Zweber:

Thank you for your letter of September 24, 2004, together with fax of September 14, 2004 from Guardian West to OSHA, and memorandum to Guardian West employees dated September 10(?), 2004.

I have responded to these documents in a separate letter of this same day. I want OSHA to treat this letter as a new complaint that Guardian West has violated posting requirements and has knowingly made false statements to OSHA in connection with my original complaint.

It appears that OSHA has required Guardian West to post a notice to employees that OSHA has received a complaint. This notice contains several factual errors, which are listed and discussed in the attached document. The first problem is that Guardian West has falsely characterized the nature of the complaint. The second problem is that Guardian West has used the notice as a platform to make false statements about the incident.

I am uncertain as to OSHA's rules as to this notice. At a minimum you need to require them to post the notice again with a correct characterization of the complaint:

That there was an acid spill which reacted with hazardous waste on the floor, causing a release of a toxic gas, hydrogen sulfide, and that Guardian West failed to follow the contingency plan and related rules in responding to the incident.

Beyond this, I do not believe that Guardian West should be allowed to use the OSHA-required notice as a platform to make false statements. At a minimum they should preface these statements with language such as "Guardian West denies that there was a hydrogen sulfide release," so that employees would not construe the statements as

OSHA findings.

In addition to posting a corrected version of the original notice, Guardian West needs to be required to post a second notice that OSHA has received a complaint:

That Guardian West has violated posting requirements and has knowingly made false statements to OSHA in connection with a complaint about an acid spill, release of hydrogen sulfide gas and failure to carry out the contingency plan on August 5, 2004.

The fax is not signed. OSHA needs to back up and require that Guardian West provide a signed copy that could provide the basis for criminal prosecution. I am concerned that, if you proceed on the basis of the unsigned fax, Guardian West will later claim that an unauthorized draft was released.

There are a number of documents that were or should have been generated at Guardian West in connection with this incident. I have copies of some, but not all of these. I am concerned that, if I list these documents specifically, it will make it easier for Guardian West to destroy or alter them. Once a criminal investigation has been opened and I have been assured that information is not being shared with Guardian West, I will be prepared to provide an affidavit for a search warrant listing items that need to be seized.

I have attached a short outline of the false statements in the fax and notice, with a short response.

Sincerely,

Morton F. Dorothy

RESPONSE TO MEMO AND FAX OF SEPTEMBER 2004

The following points relate to the "memorandum" to Guardian West employees apparently dated September 10, 2004, and faxed to OSHA on September 14, 2004.

1. "The complaint was that we had a Hazardous Waste spill..."
 - a. The complaint did not allege a "hazardous waste spill". The complaint was that there was an acid spill that reacted with hazardous waste on the floor to produce hydrogen sulfide gas, and that Guardian West failed to follow the contingency plan and related rules in responding to the spill and release.
2. "We did not have ... a release of hydrogen sulfide gas at any time."
 - a. There was a hydrogen sulfide release at about 4 a.m. on the morning of August 5, 2004
 - b. I am a qualified expert in this area, and am prepared to testify that there was a release of hydrogen sulfide. Do they have any qualified witnesses that could testify otherwise?
3. "We did have a break in one of the discharge pipes in the chrome plating department tank #8 which has a diluted sulfuric acid content..."
 - a. The break was on the pipe used to add concentrated sulfuric acid to the tank, not on a discharge pipe.
 - b. The pipe that broke contained concentrated sulfuric acid.
 - c. This was my analysis of the situation at the time, which was confirmed by all my discussions with plant personnel up to the time I was suspended..
4. "We do not have any chemicals that would produce hydrogen sulfide gas."
 - a. Guardian West has started using a new chemical "HSA (High Sulfur Additive) -90" in Tank 20.
 - i. This chemical contains reduced sulfur, and may be capable of generating hydrogen sulfide. I was terminated from my employment at Guardian West before I was able to test this chemical to see if it was the cause of this release.
 - b. Guardian West allows waste to accumulate for an indefinite time period in the sump area under the catwalk.

- i. It is possible that the sulfate waste in that area has undergone chemical or biological conversion to the sulfide form, and is therefore capable of evolving hydrogen sulfide.

c. The acid spill on August 5, 2004, in fact produced hydrogen sulfide.

The following points relate to the fax sent to OSHA and dated September 14, 2004.

1. The fax has not been signed.
 - a. I do not feel that I should be required to answer unsigned allegations which Guardian West can at a later date deny having made.
2. "Guardian West did not have ... a release of hydrogen sulfide gas on August 5, 2004.
 - a. There was a hydrogen sulfide release at about 4 a.m. on the morning of August 5, 2004
 - b. I am a qualified expert in this area, and am prepared to testify that there was a release of hydrogen sulfide. Do they have any qualified witnesses that could testify otherwise?.
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 - a. The pipe that broke contained concentrated sulfuric acid.
 - b. This was my analysis of the situation at the time, which was confirmed by all my discussions with plant personnel up to the time I was suspended..
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 - a. I have not written any "threat letters".
 - b. All of my communications with Guardian West since I was suspended have been in writing and can be provided if requested.
5. "(W)e have received threat letters ... that he would make it difficult for Guardian West by calling the local and federal agencies."
 - a. Although I have in fact contacted these agencies, I at no time stated or threatened that I would do so..
 - b. All of my communications with Guardian West since I was suspended

have been in writing and can be provided if requested.

6. "(W)e have received threat letters that if we did not hire this employee back he would make it difficult for Guardian West ..."
 - a. I have not at any time asked to be hired back..
 - b. All of my communications with Guardian West since I was suspended have been in writing and can be provided if requested.
7. "We have not had any spills or releases."
 - a. This is a false statement.
 - b. Guardian West admits that there was a spill earlier in the same document.

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

October 12, 2004

Bill Keller
Champaign County ESDA
1905 East Main
Urbana IL 61802

Dear Mr. Keller:

This letter to confirm our telephone conversation of this day in which you stated that, as of this day, ESDA has not received a modified contingency plan from Guardian West since the hydrogen sulfide release incident of August 5, 2004.

On August 5, 2004, there was an acid spill at Guardian West. The acid reacted with spilled chemicals on the floor, producing hydrogen sulfide, a toxic gas similar to hydrogen cyanide or carbon monoxide. I had safety called, and asked for a hydrogen sulfide meter. The safety officer responded that he did not know what a hydrogen sulfide meter was, or whether we had one. I told him that the Urbana Fire Department had one, and suggested that he needed to consider evacuating the building until we could determine whether the levels were safe. He then disappeared, leaving me alone to deal with the situation. I laid out water hoses to dilute the spill, and then went outside, since I was feeling sick. Other workers also left because they were sick.

After obtaining a copy of the contingency plan from you, I learned that the plan does not specifically address this type of incident, does not require training in dealing with hydrogen sulfide, and does not require the availability of a hydrogen sulfide meter or respirators that would be effective against this gas. State rules require that the plan be amended after it fails (35 Ill. Adm. Code 725.154). Rather than amend the plan and spend a small amount of money to obtain a meter and respirators, Guardian West has hired lawyers to defend their "right" to endanger workers and emergency responders.

I have filed a formal complaint with the State to enforce these rules.. Based on your statement to me, I will amend my complaint to allege a continuing violation through October 12, 2004.

Sincerely,

Morton F. Dorothy

Subj: **Guardian west**
Date: 10/25/2004 11:13:35 AM Central Daylight Time
From: DeManche.SueEllen@dol.gov (DeManche, Sue Ellen - OSHA)
To: MDor4248@aol.com ('MDor4248@aol.com')

Morton,

I am the compliance officer conducting the inspection at Guardian West. I wish to speak with you over the phone about what happened on Aug 5. I will call you, if you will reply to my email with a convenient time for you and a phone number where you can be reached. Thank you.

Sue Ellen DeManche
Demanche.SueEllen@dol.gov
US DOL - OSHA
Peoria Area Office
2918 W Willow Knolls Rd
Peoria, IL 61614
(309) 589-7033 Ext. 220
Fax (309) 589-7326

----- Headers -----

Return-Path: <DeManche.SueEllen@dol.gov>
Received: from rly-xb06.mx.aol.com (rly-xb06.mail.aol.com [172.20.64.138]) by air-xb04.mail.aol.com (v102.9) with ESMTP id MAILINXB42-6c4417d26241c9; Mon, 25 Oct 2004 12:13:35 -0400
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Mon, 25 Oct 2004 12:09:20 -0400
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id <VNR4ZTKZ>; Mon, 25 Oct 2004 12:09:20 -0400
Message-ID: <14910C7F0A63904186E0A85F281256597C15EB@NO-EX13>
From: "DeManche, Sue Ellen - OSHA" <DeManche.SueEllen@dol.gov>
To: "'MDor4248@aol.com'" <MDor4248@aol.com>
Subject: Guardian west
Date: Mon, 25 Oct 2004 12:13:22 -0400
MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2657.72)
Content-Type: multipart/alternative;
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X-AOL-IP: 63.106.133.223
X-AOL-SCOLL-SCORE: 0:0:0
X-AOL-SCOLL-URL_COUNT: 0

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

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October 27, 2004

Peggy A. Zweber, Area Director
U.S. Dept. of Labor, OSHA
2918 W. Willows Knolls Rd
Peoria IL 61614

Attn: Sue Ellen DeManche
Re: Guardian West, Urbana, Illinois
OSHA Complaint No. 204985014

Dear Ms. DeManche:

This letter is a follow up to my complaint of September 2, 2004, in which I complained that on August 5, 2004, there was an acid spill which reacted with hazardous waste on the floor, causing a release of a toxic gas, hydrogen sulfide, and that Guardian West failed to follow the contingency plan and related rules in responding to the incident.

I have a pending appeal of denial of unemployment benefits that arose out of the hydrogen sulfide release incident of August 5, 2004. The Illinois Department of Employment Security conducted a telephone hearing in connection with this appeal on October 25 and 26, 2004. The IDES Docket No. is 4051376A. The hearing officer is Claude H. Potts, 1-800-423-2458. The hearing is continued until November 3, 2004.

On October 4, 2004, I wrote you a letter detailing false statements made by Guardian West in a fax and memorandum sent to you on September 14 and 10(?), 2004. Two of these statements are as follows:

"We did have a break in one of the discharge pipes in the chrome plating department tank #8 which has a diluted sulfuric acid content..."

"We did have a pipe break in our plating department, which contained a diluted sulfuric acid content..."

At the October 26, 2004 hearing, Tony Rice, Plating Manager, testified under oath that the acid spill was from the fill pipe to Tank 8 (as opposed to the discharge pipe) and that he was told that the spill was concentrated sulfuric acid (as should be the case for the fill pipe).

In addition, I have received information from a person who still works at the factory that the required OSHA notices concerning this complaint are posted in an area that is not accessible to him. According to this person, the notice that he has seen merely says that a notice has been posted in an area accessible to the affected workers.

I worked in the plating lab. The spill was on the plating line itself. The gas, however, mainly drifted south into the load/unload area. Most of the workers who were sickened were in the load/unload area. The person who complained to me worked to the south of the load/unload area, and normally comes and goes through that area. If the notice is not accessible to him, it seems unlikely that it is accessible to the workers in the load/unload area.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

October 27, 2004

Peggy A. Zweber, Area Director
U.S. Dept. of Labor, OSHA
2918 W. Willows Knolls Rd
Peoria IL 61614

Attn: Sue Ellen DeManche
Re: Guardian West, Urbana, Illinois

Dear Ms. DeManche:

This letter is a follow up to my letter of October 4, 2004, in which I complained that Guardian West had violated posting requirements and knowingly made false statements to OSHA in connection with its investigation of OSHA Complaint No. 204985014.

I have a pending appeal of denial of unemployment benefits that arose out of the hydrogen sulfide release incident of August 5, 2004. The Illinois Department of Employment Security conducted a telephone hearing in connection with this appeal on October 25 and 26, 2004. The IDES Docket No. is 4051376A. The hearing officer is Claude H. Potts, 1-800-423-2458. The hearing is continued until November 3, 2004.

My complaint in this matter concerns several false statements made by Guardian West to OSHA in connection with this incident. Two of these statements are as follows:

"We did have a break in one of the discharge pipes in the chrome plating department tank #8 which has a diluted sulfuric acid content..."

"We did have a pipe break in our plating department, which contained a diluted sulfuric acid content,..."

At the October 26, 2004 hearing, Tony Rice, Plating Manager, testified under oath that the acid spill was from the fill pipe to Tank 8 (as opposed to the discharge pipe) and that he was told that the spill was concentrated sulfuric acid (as should be the case for the fill pipe).

In addition, I have received information from a person who still works at the factory that the required OSHA notices are posted in an area that is not accessible to

him. According to this person, the notice that he has seen merely says that a notice has been posted in an area accessible to the affected workers.

I worked in the plating lab. The spill was on the plating line itself. The gas, however, mainly drifted south into the load/unload area. Most of the workers who were sickened were in the load/unload area. The person who complained to me worked to the south of the load/unload area, and normally comes and goes through that area. If the notice is not accessible to him, it seems unlikely that it is accessible to the workers in the load/unload area.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

November 8, 2004

Bill Keller
Champaign County ESDA
1905 East Main
Urbana IL 61802

Dear Mr. Keller:

This letter to confirm our telephone conversation of this day in which you stated that, as of this day, ESDA has not received a modified contingency plan from Guardian West since the hydrogen sulfide release incident of August 5, 2004.

I have filed a formal complaint with the State to enforce these rules. Based on your statement to me, I will amend my complaint to allege a continuing violation through November 8, 2004.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

217/384-1010
MDor4248@AOL.COM

November 30, 2004

Brian Bothast
Acting Area Director
U.S. Dept. of Labor, OSHA
2918 W. Willows Knolls Rd
Peoria IL 61614

Attn: Sue Ellen DeManche
Re: Guardian West, Urbana, Illinois
OSHA Complaint No. 204985014

Dear Mr. Bothast:

Thank you for your attention to my complaint. I am pleased to learn that OSHA is proposing a citation based on my initial complaint.

I need to point out that Guardian West/Flex-N-Gate initially provided false information to OSHA about this incident. I made a separate complaint concerning the false information. Will a separate citation be issued concerning this aspect of the incident?

I feel that a \$750 penalty is inadequate in this situation. The only evidence as to the level of hydrogen sulfide present is the observation that I had the greatest exposure, was sickened, but survived. The low penalty rewards Guardian West/Flex-N-Gate for failing to measure the gas levels as required by the contingency plan.

This incident happened on August 5, 2004. The incident demonstrated that there is a potential for future hydrogen sulfide releases. Guardian West/Flex-N-Gate has adamantly refused to take corrective measures for nearly four months, recklessly exposing workers to potentially fatal accidents. In addition, I was discharged from my employment as a result of this incident.

I would like to see the notification of corrective action when you receive it. Corrective action needs to include the following:

1. Guardian West/Flex-N-Gate will notify the Illinois Environmental Protection Agency and the Champaign County Emergency Services and Disaster Agency about the August 5, 2004 incident.

2. Guardian West/Flex-N-Gate will test chemical additive HSA-90 to determine if it is a potential source of hydrogen sulfide when mixed with strong acid.
3. Guardian West/Flex-N-Gate will agree to periodic cleaning of the sump area to improve drainage and to guard against possible chemical or biological changes to the accumulated waste.
4. Guardian West/Flex-N-Gate will amend the contingency plan to specifically address the possibility of an acid spill resulting in a hydrogen sulfide release. The amended plan will require that a hydrogen sulfide meter be available at the plant, that personnel be trained in its use, that respirators suitable for use with hydrogen sulfide be available, and that personnel be trained in their use.
5. Guardian West/Flex-N-Gate will require that hydrogen sulfide be measured before confined space entry is permitted in Tank 20, and will require respirators if the level is above 10 ppm, or such other level as OSHA may require.
6. Guardian West/Flex-N-Gate will retract the warning I received for responding to the spill of August 5, 2004, and will issue a written apology to me on behalf of the company.
7. If Denny Corbett remains employed at Guardian West/Flex-N-Gate, he will be required to take or repeat OSHA 40-hour hazwoper training.
8. If Sheryl Drake remains employed at Guardian West/Flex-N-Gate, she will be required to repeat OSHA 24-hour hazwoper training. This training must be administered by an independent contractor who will provide documentation showing that she attended the classes and learned the material.
9. If Sheryl Drake remains employed at Guardian West/Flex-N-Gate, she will be required to write out and sign the following statement:

"Hydrogen sulfide is a toxic gas. If a toxic gas is detected, I will not require employees to continue working until the level has been measured and determined to be safe. I understand that plating lab employees have been given special training to deal with spills and other emergencies in the plating department, regardless of whether the emergency is in the lab or on the line. I understand that, because the lab employees are the people with specialized knowledge of the nature and properties of the chemicals used on the line, it is necessary that they respond to spills and emergencies, and that they be available to assist other responders. I will not attempt to prevent response by lab workers. In the event a spill or other emergency happens on my shift, I am willing and prepared to carry out my response duties."

10. A copy of Sheryl Drake's signed statement will be posted in the plating control room for a period of one week.
11. Guardian West/Flex-N-Gate will provide me with copies of documentation showing completion of the above steps.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
804 East Main
Urbana IL 61802-2822

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MDor4248@AOL.COM

April 24, 2005

Hon. Ken S. Welch, Judge
Occupational Safety & Health Review Commission
#1924 Building, Suite 2R90
100 Alabama Street, S.W.
Atlanta, GA 30303-3104

Re: Guardian West, Urbana, Illinois
OSHRC Docket No. 04-2142
Inspection No. 305896243

Dear Judge Welch:

I believe I am the complainant in the above OSHA matter. I have recently learned that some sort of proceeding has been held before you in connection with this matter. The papers I have obtained refer to a "Stipulation and Settlement Agreement". I cannot, however, tell anything about the substance of the settlement from the papers I have obtained.

I was fired from this job shortly after the incident, in which I attempted to follow proper safety procedures. This is a non-union job. It looks to me as if your system is set up on the assumption that there is a union to represent the workers, and that there is no system to allow an individual complainant to follow the case.

After I complained to OSHA, I offered several times to testify in their proceedings, but was never invited to do so. I have heard from the Peoria, IL, OSHA office intermittently about this matter. The last I heard from them, there was a \$750 fine and a requirement to come into compliance.

The documents I have received includes a "Statement of Mike Trueblood" which argues on theoretical grounds that the hydrogen sulfide incident could not have happened. This theoretical treatment cannot possibly stand against the fact that the incident did happen. Furthermore, I disagree with many things Mike says. I can construct theoretical arguments as to why this happened that are just as persuasive as Mike's.

I would like the opportunity to review any compliance plan in this matter. Guardian West has apparently taken no steps whatsoever to remedy an extremely

dangerous situation, which could result in a fatal accident at any time. The source of the hydrogen sulfide gas was probably the accumulated sludge and debris under the plating line. This needs to be periodically cleaned, and not allowed to age under the acid lines. The plant needs to update its Emergency Response Plan to specifically address the possibility of a hydrogen sulfide incident, and to provide training, monitoring equipment and safety equipment to deal with such an incident.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801

217/384-1010
MDor4248@AOL.COM

October 29, 2005

Mr. Thomas V. Skinner
Regional Administrator
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Re: Illinois RCRA authorization

Dear Mr. Skinner:

This letter is intended to transmit substantive information that the Illinois RCRA program may no longer be adequate within the meaning of 40 CFR 239.13.

I am the complainant in Pollution Control Board case PCB 05-049. This case grew out of an accident in which a pipe carrying concentrated sulfuric acid separated, spilling the acid onto hazardous waste that had accumulated on the floor under tanks in an electroplating operation. The acid reacted with the waste, generating hydrogen sulfide gas. This was an unexpected result, in that the waste had not previously been known to contain sulfide.

The factory is a large quantity generator of hazardous waste that operates without a RCRA permit pursuant to the Illinois equivalent of 40 CFR 260.34. Among other things, it is required to have a contingency plan, to follow the contingency plan in an emergency, to notify the Illinois EPA, and to amend the plan in the event the plan fails. The facility had a contingency plan, but failed to follow the plan in any significant respect, and failed to notify. The facility has not amended the plan in response to the failure, specifically failing to modify the plan to address any future hydrogen sulfide release incident.

The Illinois EPA investigated this incident. Factory management essentially denied that the incident had occurred, and IEPA took no action. I then filed a citizen enforcement action with the Pollution Control Board. Management has admitted in discovery that the incident took place.

On October 20, 2005, the Board granted summary judgment in favor of the facility as to the counts alleging violation of the contingency plan requirements,

reasoning that the released hydrogen sulfide was an "uncontained gas", and therefore not a "solid waste" within the meaning of RCRA. The Board cited Helter v. AK Steel Corp., 1997 U.S. Dist LEXIS 9852(S.D. Oh. 1997).

Helter involved a release of a byproduct gas from a broken pipe, which gas was not a "solid waste" or a "hazardous waste" prior to release. The plaintiff in that case had argued that RCRA applied to the released gas. The Court held that the gas did not become a "solid waste" upon release, because of the "uncontained gas" exclusion. In the case before the Board, on the other hand, the gas originated from material that was already a hazardous waste and subject to the contingency planning requirements. The release of the gas was a trigger for implementation of the contingency plan with respect to the hazardous waste on the floor, regardless of whether the released gas was itself a "solid waste" or "hazardous waste".

The Board's extension of Helter undercuts all RCRA regulations aimed at protecting workers and the public from gaseous emissions from hazardous waste, including emissions from sulfide and cyanide bearing reactive waste, since such emissions would almost always be "uncontained gases". Specifically, hazardous waste management facilities (including conditionally exempt generators) no longer have to comply with the following requirements:

- Facilities handling potentially reactive waste no longer have to prepare contingency plans for dealing with a toxic gas release. (Section 265.51)
- Because toxic emissions are excluded from contingency planning, facilities no longer have to: train workers concerning the dangers of toxic gases from mixing acids with reactive wastes; provide meters or respirators effective against foreseeable toxic gases; train workers in the use of such protective equipment; or, notify local emergency response teams of the possibility of toxic gas emissions.
- Facilities no longer have to notify IEPA or local emergency response teams about toxic gas releases from hazardous waste. (Section 265.56)

These important elements are now missing from the Illinois RCRA program. USEPA needs to initiate a withdrawal of determination of adequacy procedure until the State remedies this ruling. I intend to file a motion for reconsideration with the Board in the near future. Quick action on your part would allow the Board to reverse itself.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801

217/384-1010
MDor4248@AOL.COM

October 29, 2005

Mr. Bill Child, Chief
Bureau of Land
1021 N. Grand Avenue East
Box 19276
Springfield, IL 62794-9276

Re: Flex-N-Gate/Guardian West, PCB 05-049

Dear Bill:

I am the complainant in Pollution Control Board case PCB 05-049. This case grew out of an accident in which a pipe carrying concentrated sulfuric acid separated, spilling the acid onto hazardous waste that had accumulated on the floor under tanks in an electroplating operation. The acid reacted with the waste, generating hydrogen sulfide gas. This was an unexpected result, in that the waste had not previously been known to contain sulfide.

Flex-N-Gate, Guardian West is a large quantity generator of hazardous waste that operates without a RCRA permit pursuant to Section 720.134. The facility had a contingency plan, but failed to follow the plan in any significant respect, and failed to notify. The facility has not amended the plan in response to the failure, specifically failing to modify the plan to address any future hydrogen sulfide release incident.

Ken Keigley investigated this incident. Factory management essentially denied that the incident had occurred, and IEPA took no action. I then filed a citizen enforcement action with the Pollution Control Board. Management has admitted in discovery that the incident took place.

This case is similar to *People v. Conair*, PCB 05-219, which includes allegations regarding violation of contingency planning requirements.

On October 20, 2005, the Board granted summary judgment in favor of Flex-N-Gate as to the counts alleging violation of the contingency plan requirements, reasoning that the released hydrogen sulfide was an "uncontained gas", and therefore not a "solid waste" within the meaning of RCRA. The Board cited Helter v. AK Steel Corp., 1997 U.S. Dist LEXIS 9852(S.D. Oh. 1997).

Helter involved a release of a byproduct gas from a broken pipe, which gas was not a "solid waste" or a "hazardous waste" prior to release. The plaintiff in that case had argued that RCRA applied to the released gas. The Court held that the gas did not become a "solid waste" upon release, because of the "uncontained gas" exclusion. In the case before the Board, on the other hand, the gas originated from material that was already a hazardous waste and subject to the contingency plan requirements. The release of the gas was a trigger for implementation of the contingency plan with respect to the hazardous waste on the floor, regardless of whether the released gas itself was a "solid waste".

The Board's extension of Helter undercuts all RCRA regulations aimed at protecting workers and the public from gaseous emissions from hazardous waste, including emissions from sulfide and cyanide bearing reactive waste, since such emissions would almost always be "uncontained gases". Specifically, hazardous waste management facilities (including conditionally exempt generators) no longer have to comply with the following requirements:

- Facilities handling potentially reactive waste no longer have to prepare contingency plans for dealing with a toxic gas release. (Section 725.151)
- Because toxic emissions are excluded from contingency planning, facilities no longer have to: train workers concerning the dangers of toxic gases from mixing acids with reactive wastes; provide meters or respirators effective against foreseeable toxic gases; train workers in the use of such protective equipment; or, notify local emergency response teams of the possibility of toxic gas emissions.
- Facilities no longer have to notify IEPA or local emergency response teams about toxic gas releases from hazardous waste. (Section 725.156)

I have notified the Regional Administrator of these program deficiencies pursuant to 40 CFR 239.13. I will file a motion for reconsideration with the Board in the near future. Support from IEPA would be appreciated.

Sincerely,

Morton F. Dorothy

Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801

217/384-1010
MDor4248@AOL.COM

October 29, 2005

Mr. Matthew J. Dunn, Chief
Environmental Enforcement Division
Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Re: Flex-N-Gate/Guardian West, PCB 05-049

Dear Mr. Dunn:

I am the complainant in Pollution Control Board case PCB 05-049. This case grew out of an accident in which a pipe carrying concentrated sulfuric acid separated, spilling the acid onto hazardous waste that had accumulated on the floor under tanks in an electroplating operation. The acid reacted with the waste, generating hydrogen sulfide gas. This was an unexpected result, in that the waste had not previously been known to contain sulfide.

Flex-N-Gate, Guardian West is a large quantity generator of hazardous waste that operates without a RCRA permit pursuant to Section 720.134. The facility had a contingency plan, but failed to follow the plan in any significant respect, and failed to notify. The facility has not amended the plan in response to the failure, specifically failing to modify the plan to address any future hydrogen sulfide release incident.

IEPA investigated this incident. Factory management essentially denied that the incident had occurred, and IEPA took no action. I then filed a citizen enforcement action with the Pollution Control Board. Management has admitted in discovery that the incident took place.

On October 20, 2005, the Board granted summary judgment in favor of Flex-N-Gate as to the counts alleging violation of the contingency plan requirements, reasoning that the released hydrogen sulfide was an "uncontained gas", and therefore not a "solid waste" within the meaning of RCRA. The Board cited Helter v. AK Steel Corp., 1997 U.S. Dist LEXIS 9852(S.D. Oh. 1997).

Helter involved a release of a byproduct gas from a broken pipe, which gas was not a "solid waste" or a "hazardous waste" prior to release. The plaintiff in that case had

argued that RCRA applied to the released gas. The Court held that the gas did not become a "solid waste" upon release, because of the "uncontained gas" exclusion. In the case before the Board, on the other hand, the gas originated from material that was already a hazardous waste and subject to the contingency plan requirements. The release of the gas was a trigger for implementation of the contingency plan with respect to the hazardous waste on the floor, regardless of whether the released gas itself was a "solid waste".

The Board's extension of Helter undercuts all RCRA regulations aimed at protecting workers and the public from gaseous emissions from hazardous waste, including emissions from sulfide and cyanide bearing reactive waste, since such emissions would almost always be "uncontained gases". Specifically, hazardous waste management facilities (including conditionally exempt generators) no longer have to comply with the following requirements:

- Facilities handling potentially reactive waste no longer have to prepare contingency plans for dealing with a toxic gas release. (Section 725.151)
- Because toxic emissions are excluded from contingency planning, facilities no longer have to: train workers concerning the dangers of toxic gases from mixing acids with reactive wastes; provide meters and respirators effective against foreseeable toxic gases; train workers in the use of such protective equipment; or, notify local emergency response teams of the possibility of toxic gas emissions.
- Facilities no longer have to notify IEPA or local emergency response teams about toxic gas releases from hazardous waste. (Section 725.156)

I have identified *People v. Conair*, PCB 05-219, as a case which includes allegations regarding violation of contingency planning requirements. It is possible that your office may have other cases involving hazardous waste contingency planning.

I will file a motion for reconsideration with the Board in the near future. Support from your office would be appreciated.

Sincerely,

Morton F. Dorothy



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2006

Mr. Morton F. Dorothy
104 W. University
Southwest Suite
Urbana, IL 61801

Re: Letter regarding Morton F. Dorothy v. Flex-N-Gate Corporation, PCB 05-049
Investigation No. 2005 ENV 2012

Dear Mr. Dorothy:

This letter is to respond to your letter of October 29, 2005 to Matthew J. Dunn of this Office. We have reviewed your letter and the related filings in the above-referenced case currently proceeding before the Illinois Pollution Control Board ("Board"). In that letter, you articulate your disagreement with an order issued by the Board in the pending case, in which you are a complainant, and request the support of this Office. However, having reviewed the materials, and noting that this matter remains properly before the Board, we respectfully decline to intervene in the pending case.

Thank you for your correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Perzan", is written over the typed name and title of Christopher P. Perzan.

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, Illinois 60601
312 814-3532

Morton F. Dorothy
104 W. University
Southwest Suite
Urbana IL 61801

217/384-1010
MDor4248@AOL.COM

February 13, 2006

Mr. Matthew J. Dunn, Chief
Environmental Enforcement Division
Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Re: Flex-N-Gate/Guardian West, PCB 05-049

Dear Mr. Dunn:

On January 9, 2006, I received a letter from Christopher Perzan of your office in response to my letter of October 29, 2005, stating that the Attorney General's Office was declining to intervene in the above case.

In this case the Pollution Control Board has ruled that RCRA hazardous waste management facilities in Illinois no longer have to comply with the following requirements:

- Facilities handling cyanide and other reactive wastes no longer have to prepare contingency plans for dealing with a toxic gas release. (Section 725.151)
- Facilities no longer have to: train workers concerning the dangers of toxic gases from mixing acids with cyanide wastes; provide meters and respirators effective against cyanide; train workers in the use of such protective equipment; or, notify local emergency response teams of the possibility of cyanide releases.
- Facilities no longer have to notify IEPA or local emergency response teams about cyanide gas releases from hazardous waste. (Section 725.156).

This matter is still before the Board on my motion for reconsideration. I am alone and out-gunned. There is a substantial possibility that the Board will rule against me, in which case the decision will become effective as the law in Illinois.

I may have to put out press release in the near future. I would like to be able to say that the Attorney General is on record as opposing the deregulation of toxic gas releases from hazardous waste management facilities.

Sincerely,

Morton F. Dorothy