

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--------------------------|---|---------------|
| MORTON F. DOROTHY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 05-49 |
| |) | |
| FLEX-N-GATE CORPORATION, |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF FILING

| | |
|----------------------------------|----------------------------------|
| TO: Ms. Dorothy M. Gunn | Carol Webb, Esq. |
| Clerk of the Board | Hearing Officer |
| Illinois Pollution Control Board | Illinois Pollution Control Board |
| 100 West Randolph Street | 1021 North Grand Avenue East |
| Suite 11-500 | Post Office Box 19274 |
| Chicago, Illinois 60601 | Springfield, Illinois 62794-9274 |
| (VIA ELECTRONIC MAIL) | (VIA ELECTRONIC MAIL) |

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board Flex-N-Gate Corporation's **MOTION FOR SANCTIONS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**, a copy of which is herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

By: /s/ Thomas G. Safley
One of Its Attorneys

Dated: June 19, 2006

Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, certify that I have served the attached
MOTION FOR SANCTIONS OR, IN THE ALTERNATIVE, FOR SUMMARY

JUDGMENT upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

via electronic mail on June 19, 2006; and upon:

Mr. Morton F. Dorothy
104 West University, SW Suite
Urbana, Illinois 61801

by depositing said documents in the United States Mail in Springfield, Illinois, postage
prepaid, on June 19, 2006

/s/ Thomas G. Safley
Thomas G. Safley

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**MOTION FOR SANCTIONS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

NOW COMES Respondent, FLEX-N-GATE CORPORATION (“Flex-N-Gate”), by and through its attorneys, HODGE DWYER ZEMAN, pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.800, and for its Motion for Sanctions or, in the Alternative, for Summary Judgment, states as follows:

I. INTRODUCTION

As set forth in detail below, following the Illinois Pollution Control Board’s (“Board”) October 20, 2005 Order (“Board Oct. 20 Order”) in this matter, Flex-N-Gate filed an Amended Answer asserting as an Affirmative Defense that its management of hazardous waste was exempt from permitting requirements. Flex-N-Gate also served discovery on Complainant seeking to discover the basis of any factual disagreement between the parties with regard to that issue. Complainant failed to validly respond to that discovery. Flex-N-Gate filed a Motion to Compel. The Hearing Officer granted that Motion. Complainant, in violation of the Hearing Officer’s Order, continued to fail to validly respond to Flex-N-Gate’s discovery. In light of these actions, and Complainant’s

other actions in this matter, the Board should sanction Complainant by dismissing Count I of his Complaint.

Alternatively, the Board should grant Flex-N-Gate Summary Judgment on its Affirmative Defense. Complainant has, through discovery requests that he did answer, clarified that Count I of his Complaint is “restricted to the issue of whether Respondent has violated the storage time requirements for hazardous waste under the catwalk.” As is explained below, any “hazardous waste under the catwalk” at Flex-N-Gate’s facility is contained within a Wastewater Treatment Unit (“WWTU”). There is no accumulation time limit for waste contained in a WWTU.

II. THE BOARD MUST SANCTION COMPLAINANT FOR HIS DISREGARD OF, AND FAILURE TO COMPLY WITH, THE HEARING OFFICER’S ORDER COMPELLING HIM TO RESPOND TO DISCOVERY, AND HIS OTHER ACTIONS.

A. Background

On May 27, 2005, Flex-N-Gate filed its Motion for Summary Judgment as to All Counts of Complainant’s Complaint (“Motion for Complete Summary Judgment”). As to Count I of Complainant’s Complaint, Flex-N-Gate sought summary judgment on the grounds that its management of hazardous waste is conducted pursuant to exemptions from permitting requirements, and therefore that no permit is required for Flex-N-Gate’s facility under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, *et seq.* See Flex-N-Gate’s Motion for Complete Summary Judgment at 19-34.

On October 20, 2005, the Board issued an Order granting Flex-N-Gate summary judgment as to Counts II through VI of Complainant’s Complaint (pursuant to a separate Motion for Summary Judgment that Flex-N-Gate also filed on May 27, 2005), but

denying Flex-N-Gate's Motion for Complete Summary Judgment. With regard to Flex-N-Gate's argument as to Count I, the Board's Order stated:

Therefore, under the Act and the Board's RCRA regulations, the determination as to whether a facility requires a RCRA permit depends on site-specific facts related to the facility's waste generation and handling. As discussed in more detail below, because the parties disagree on whether Flex-N-Gate met all of the necessary requirements, the Board finds a genuine issue of material fact exists.

* * *

The Board agrees with complainant Mr. Dorothy that Flex-N-Gate bears the burden to prove it is exempt from the requirement to obtain a RCRA permit or interim status.

In seeking to meet that burden, Flex-N-Gate states that one of its hazardous wastestreams is treated by equipment that meets the definition of a WWTU and that this wastestream is exempt while it remains within the WWTU. Flex-N-Gate states the remaining hazardous wastestreams are exempt under the accumulation exemption because the wastes are accumulated in containers before being transported off-site for treatment, storage, or disposal.

Mr. Dorothy claims that Flex-N-Gate does not comply with all of the regulations applicable to generators. For example, Mr. Dorothy disputes that the equipment Flex-N-Gate uses to treat one of its wastestreams meets the definition of a WWTU. Mr. Dorothy also alleges that Flex-N-Gate accumulated hazardous waste for longer than the time limits allowed in Section 722.134.

Board October 20 Order at 14, 16-17.

In its October 20, 2005, Order, the Board also held that the question of whether a party's management of hazardous waste is allowed by an exemption to the RCRA permit requirement must be pled as an affirmative defense, and allowed Flex-N-Gate to amend its Answer to state such an affirmative defense. *Id.* at 19-20. In light of this Order, Flex-N-Gate on November 15, 2005, filed its Amended Answer, which asserted as an affirmative defense that Flex-N-Gate is exempt from the RCRA permit requirement, in

part under RCRA's WWTU exemption. See Flex-N-Gate's Amended Answer at 11-14. Complainant never filed any response to Flex-N-Gate's Affirmative Defense.

In addition, in an attempt to understand what issues of material fact might exist between Flex-N-Gate and Complainant on this issue — in order to enable Flex-N-Gate to prepare for hearing accordingly — Flex-N-Gate served discovery requests on Complainant. Specifically, on January 18, 2006, Flex-N-Gate served its Interrogatories and Requests for Production on Complainant, copies of which are attached hereto as Exhibits A and B.

On February 14, 2006, Complainant provided his "Response" to Flex-N-Gate's Interrogatories, a copy of which is attached hereto as Exhibit C. However, Complainant refused to answer the majority of Flex-N-Gate's Interrogatories, in part based on the assertion that Flex-N-Gate had never raised the WWTU exemption — despite Flex-N-Gate's Affirmative Defense doing exactly that — and in part relying on baseless objections. See, e.g., Exhibit C at 2, "answer" to Interrogatory No. 5. Furthermore, Complainant failed to respond at all to Flex-N-Gate's Requests for Production.

On April 13, 2006, after repeated attempts to secure Complainant's cooperation, Flex-N-Gate filed its Motion to Compel. See Flex-N-Gate's Motion to Compel and the communications between Flex-N-Gate's counsel and Complainant attached thereto as exhibits. Complainant filed no Response to that Motion, and on May 9, 2006, the Hearing Officer granted the Motion, ordering Complainant to answer Flex-N-Gate's discovery requests.

Complainant has since produced documents in response to Flex-N-Gate's Requests for Production. These documents, which were due on February 14, 2006, were ultimately received on May 11, 2006. In addition, on May 11, 2006, Flex-N-Gate received Complainant's "Amended Response" to the Interrogatories propounded on January 18, 2006. See Amended Response to Interrogatories, a copy of which has been attached hereto as Exhibit D.

In his "Amended Response," Complainant has expressly violated the Hearing Officer's Order granting Flex-N-Gate's Motion to Compel. Specifically, while Complainant withdraws his contention that Flex-N-Gate had not raised the WWTU exemption, Complainant continues to refuse to answer the majority of Flex-N-Gate's Interrogatories, asserting only the same groundless objections. See, e.g., Exhibit D at 2, "amended answer" to Interrogatory No. 5.

Finally, on March 20, 2006, during a telephonic status conference, Complainant indicated that he intended to file a Motion for Leave to Amend Complaint and asked the Hearing Officer for time to do so. See March 20, 2006, Hearing Officer Order. The Hearing Officer granted Complainant sixty days, or until May 19, 2006, to file such a Motion. Complainant never filed his Motion.

B. THE BOARD MUST SANCTION COMPLAINANT FOR HIS DISREGARD OF AND FAILURE TO COMPLY WITH THE HEARING OFFICER'S ORDER AND HIS OTHER ACTIONS.

It is axiomatic that the Board has authority to order sanctions against parties in matters pending before it. Section 101.800(a) of the Board's procedural rules provides in relevant part that "[i]f any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions." 35 Ill. Admin. Code § 101.800(a). (Emphasis added.)

Further, the Board's procedural rules provide criteria for assessing the severity of the sanction to impose. Specifically,

In deciding what sanction to impose the Board will consider factors including: the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.

35 Ill. Admin. Code § 101.800(c).

Consideration of these factors makes it clear that the Board must impose a serious sanction on Complainant.

1. Complainant's Actions in these Proceedings are Intolerable and Demonstrate Bad Faith, Ultimately Prejudicing Flex-N-Gate in Causing Unreasonable Delay, the Incurrence of Otherwise Unnecessary Attorney's Fees, and in Denying Flex-N-Gate the Ability to Defend Itself.

a. Complainant's Refusals to Comply are Severe.

Complainant's refusals to comply with the Board's rules and the Hearing Officer's Order are severe. First, for months, Complainant simply ignored Flex-N-Gate's

Requests for Production. The Board's rules of course require that parties respond to discovery requests, at least with a valid objection. See, e.g., 35 Ill. Admin. Code §§ 101.616, 101.620. However, Complainant did not pose any objection or seek any extension of time with regard to the Requests for Production. He simply ignored them and did not answer at all, until being compelled to do so.

Second, Complainant's "response" to Flex-N-Gate's Interrogatories blatantly sought to avoid the requirements of the Board's discovery rules. As discussed above, when asked questions about Flex-N-Gate's WWTU, Complainant responded that Flex-N-Gate had never argued that it had a WWTU, despite the fact that Flex-N-Gate had just filed an Amended Answer asserting the WWTU exemption as an affirmative defense (not to mention the fact that Flex-N-Gate has raised the WWTU exemption throughout this litigation). To interpose such a baseless "objection" is sanctionable. Further, as discussed in Flex-N-Gate's Motion to Compel, and as the Hearing Officer found by granting that Motion, Complainant's other objections were meritless as well.

Third, and most severely, after Flex-N-Gate was forced to file a Motion to Compel, and the Hearing Officer granted that Motion, Complainant ignored the Hearing Officer's Order and (with one exception) made the same objections to Flex-N-Gate's Interrogatories that he had made before. If the Complainant will simply ignore the Hearing Officer's Orders, no other alternative exists but for the Board to sanction him.

b. The Past History of this Proceeding Demonstrates that Sanctions are Warranted.

The past history of this proceeding also demonstrates that the Board must sanction Complainant.

As the Board is aware, because of Complainant's previous actions in this case, Flex-N-Gate was forced to move the Board:

- (1) to strike multiple improper affidavits filed by Complainant;
- (2) to admonish Complainant to stop filing improper affidavits;
- (3) to admonish Complainant to stop making unsupported allegations of fact, including unsupported allegations of criminal actions by Flex-N-Gate employees;
- (4) to admonish Complainant to maintain proper decorum before the Board; and,
- (5) to admonish Complainant generally to comply with the Board's rules.

See Flex-N-Gate's Motion to Strike Affidavits Filed and Unsupported Statements Made in Support of Complainant's Summary Judgment Filings and Motion for Admonishment of Complainant ("Motion to Strike and Admonish"). (In the interest of brevity, Flex-N-Gate does not repeat the lengthy list of Complainant's failures to comply with Board rules set forth in that Motion, but rather, incorporates that Motion herein, and refers the Board to pages 21-26 of that Motion.)

On October 20, 2005, the Board granted Flex-N-Gate's Motion to Strike and Admonish, found that Complainant had disregarded the Board's rules, and admonished the Complainant to begin complying with those rules. See Board October 20 Order at 9.

In addition, Complainant served more than 120 interrogatories on Flex-N-Gate, without seeking or obtaining leave of the Hearing Officer as required by 35 Ill. Admin. Code § 101.620(a), forcing Flex-N-Gate to file a Motion for Protective Order. See Flex-N-Gate's Motion for Protective Order.

Despite the Board's admonishment, Complainant has continued to ignore the Board's rules. Thus, Complainant's failure to respond at all to Flex-N-Gate's Requests for Production until compelled to do so, Complainant's interposing of baseless objections to Flex-N-Gate's Interrogatories, and Complainant's ignoring of the Hearing Officer's Order compelling Complainant to answer those Interrogatories are not isolated lapses, but only the latest in a series of instances in which Complainant has played games in these proceedings. This also demonstrates that the Board must sanction Complainant.

c. Complainant's Actions have Delayed and Prejudiced this Proceeding.

Complainant's lack of cooperation has clearly delayed these proceedings. By failing to comply with basic discovery rules, and then the Hearing Officer's Order compelling him to comply with those rules, these proceedings have been delayed by at least four months. That is, Complainant's responses to discovery requests in this matter were due on February 14, 2006. As of the time of this filing, Flex-N-Gate has yet to receive adequate responses from the Complainant to all of its Interrogatories.

Complainant's request to the Hearing Officer for time to file a Motion for Leave to Amend his Complaint, and then failure to file such a Motion, also has delayed these proceedings. As discussed above, this essentially put the case on hold for two months,

leaving Flex-N-Gate in limbo as to what issues it would need to address in its defense of this case. At the end of this period, no Motion for Leave to Amend was filed.

Likewise, Complainant's failure to respond to Flex-N-Gate's Interrogatories has further prejudiced Flex-N-Gate because it has deprived Flex-N-Gate of the ability to understand why Complainant alleges that Flex-N-Gate is in violation of the law, and thus, to prepare its defense accordingly. Count I of Complainant's Complaint alleges that Flex-N-Gate is required to have a RCRA permit, and violated the law by operating without such a permit. See Complainant's Complaint. In light of this allegation, and of Flex-N-Gate's Affirmative Defense to this allegation, Flex-N-Gate's Interrogatories essentially ask Complainant two things:

First, what do you allege Flex-N-Gate did that required a permit?

Second, why do you think that Flex-N-Gate is not exempt from the permit requirement?

See Flex-N-Gate's Interrogatories, attached hereto as Exhibit A.

As discussed further below in the context of Flex-N-Gate's alternative Motion for Summary Judgment, Complainant appears to some extent to answer the first question. As to the second question, however, Complainant simply objects, even after the Hearing Officer ordered him to answer. Thus, Flex-N-Gate has no idea why Complainant thinks that the equipment at Flex-N-Gate's facility, which Flex-N-Gate considers to be a WWTU, is not a WWTU. This means that Flex-N-Gate does not know what evidence it needs to present at Hearing, but rather, will simply have to assume what facts are at issue, bring witnesses to testify as to those facts, and hope that other facts as to which it does not have witnesses prepared are not at issue. If such other facts are at issue at Hearing,

Flex-N-Gate will have no choice but to move for the Hearing to be rescheduled to allow it time to prepare its defense, which will result in further delay.

Further, in light of the above, Flex-N-Gate will be forced to produce witnesses at Hearing to testify about facts which may not be at issue at all. For example, perhaps Complainant agrees that “wastewater at the Facility is transferred through piping between . . . various pieces of equipment” identified in Flex-N-Gate’s Interrogatories. See Exhibit A at 11, Interrogatory No. 16. However, Complainant has refused to answer Flex-N-Gate’s Interrogatory that seeks to explore this issue, even after the Hearing Officer ordered him to do so. See Exhibit D at 3, “response” to Interrogatory No. 16. Accordingly, Flex-N-Gate has no choice but to produce a witness at hearing to testify regarding such piping, in case Complainant disagrees with Flex-N-Gate on this factual issue. This is a waste of the parties’ and the Board’s time and resources, and will only cause further delay. Additionally, this prejudices Flex-N-Gate by forcing it to spend time and attorney fees preparing testimony and evidence on questions that may not be at issue, when such questions could have been resolved if Complainant simply answered Flex-N-Gate’s Interrogatories.

Finally, of course, Flex-N-Gate has been prejudiced by having to incur attorney’s fees to file its Motion to Compel and now, this Motion.

d. Complainant Clearly has Acted in Bad Faith.

Finally, Complainant clearly has acted in bad faith. First, Flex-N-Gate submits that Complainant’s multiple failures to comply with the Board’s rules, and Complainant’s multiple unsupported allegations of criminal activity by Flex-N-Gate’s employees, which

previously led the Board to admonish Complainant, constituted bad faith. See discussion above.

Second, as also discussed above, when Complainant initially “responded” to Flex-N-Gate’s Interrogatories regarding Flex-N-Gate’s WWTU on February 14, 2006, he “objected” in part on the grounds that the information sought by those interrogatories was “irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is a ‘wastewater treatment unit,’ a ‘tank,’ etc. See Exhibit C. (Emphasis added.) The WWTU issue had been specifically discussed in the Board’s October 20 Order, however, and, pursuant to that Order, on November 15, 2005 (three months before Complainant’s initial “responses”) Flex-N-Gate had filed its Amended Answer specifically asserting the WWTU exemption as an Affirmative Defense. See Flex-N-Gate’s Amended Answer. For Complainant to assert this “objection” in the face of the explicit language of Flex-N-Gate’s Affirmative Defense constitutes bad faith and is clearly nothing more than an effort to delay this matter and avoid the requirements of the Board’s discovery rules.

Third, Complainant acted in bad faith with regard to Flex-N-Gate’s Motion to Compel. Again, Complainant did not file any response to that Motion. Rather, the Hearing Officer’s May 9, 2006 Order states:

On April 13, 2006, respondent filed a motion to compel complainant to produce discovery. Complainant advised the hearing officer that he does not oppose the motion. Accordingly, the motion is granted. Complainant hopes to mail the requested items today.

See Hearing Officer May 9, 2006 Order. (Emphasis added.)

That is, Complainant told the Hearing Officer that he did not oppose the Motion to Compel but then continued to refuse to answer Flex-N-Gate's Interrogatories for the same reasons he had stated in his initial "response" to those Interrogatories. Cf. Exhibit C, Exhibit D. Thus, Complainant clearly did oppose the Motion to Compel, and never intended to answer the Interrogatories. However, instead of arguing his objections to the Hearing Officer in a response to the Motion, so that they could be ruled on, Complainant misled the Hearing Officer into thinking that he intended to answer the Interrogatories, and then asserted the same objections. This constitutes bad faith and clearly was only meant to delay this matter further.

Fourth, as also discussed above, during a telephonic status conference on March 20, 2006, Complainant indicated that he intended to file a Motion for Leave to Amend Complaint and asked the Hearing Officer for time to do so. See March 20, 2006, Hearing Officer Order. The Hearing Officer granted Complainant sixty days, or until May 19, 2006, to file such a Motion, effectively putting the case on hold and putting Flex-N-Gate in limbo in preparing its defense. By the end of the sixty day period, however, Complainant had not filed a Motion for Leave to Amend, and now, almost a month later, he still has not done so. Thus, Complainant apparently has changed his mind regarding filing such a Motion. However, Complainant never filed anything notifying the Board, the Hearing Officer, or Flex-N-Gate that he had changed his mind and that this case could move forward on Count I. (Nor, for that matter, did Complainant move the Board or the Hearing Officer for an extension of the May 19, 2006 deadline to

file a Motion for Leave.) This also constitutes bad faith and clearly was meant simply to delay this matter.

C. **The Board has It within Its Authority to Dismiss Count I of Complainant's Complaint as a Sanction for Complainant's Disparagement of these Proceedings, and Should Do So.**

Section 101.800(b)(3) of the Board's rules provides that as a sanction, an "offending person may be barred from maintaining any particular claim, counterclaim, third-party complaint, or defense" relating to "any issue to which the refusal or failure [at issue] relates." 35 Ill. Admin. Code § 101.800(b)(2), (3). Here, Flex-N-Gate's discovery requests, and the Hearing Officer's Order granting Flex-N-Gate's Motion to Compel, relate directly to Count I of Complainant's Complaint. Thus, as a sanction for Complainant's behavior, the Board should bar Complainant from maintaining the claim set forth in that Count.

The Board has not hesitated to impose the most serious sanctions in cases before it. In Logsdon v. South Fork Gun Club, the Board struck from the record the respondent's closing brief as a sanction for failing to comply with the hearing officer's order. Logsdon v. South Fork Gun Club, PCB 00-177, 2002 Ill. ENV. LEXIS 692, at *5 (Ill.Pol.Control.Bd. Dec. 19, 2002). Additionally, the Board has dismissed proceedings entirely for failing to comply with its order and relevant procedural rules. IEPA v. City of Oregon, PCB 78-37, 1980 Ill. ENV. LEXIS 279, at *2 (Ill.Pol.Control.Bd. Dec. 4, 1980). See also, IEPA v. Celotex Corp., PCB 79-145, 1986 Ill. ENV. LEXIS 356, at *5 (Ill.Pol.Control.Bd. July 2, 1986) (dismissing one count of the complaint as a sanction). Further, the Illinois Appellate Court has upheld the Board's dismissal of a Petition as a

sanction. Modine Mfg. Co. v. Pollution Control Bd., 192 Ill. App. 3d 511, 518, 548 N.E.2d 1145, 1150 (2d Dist. 1990).

While the Board has not previously been reticent in imposing sanctions, it has stated that it will consider the nature and effect of the aberrant actions prior to the imposition of sanctions:

In determining whether sanctions are warranted, we are to consider whether a hearing officer or Board order was violated and we also may consider whether the complained-of actions demonstrate a deliberate and pronounced disregard for our jurisdiction's rules.

International Union, et al. v. Caterpillar Inc., PCB 94-240, 1996 Ill. ENV. LEXIS 579, at *10 (Ill.Pol.Control.Bd. August 1, 1996). Clearly, as stated above, Complainant's actions in this matter amply satisfy this standard. Even after the Board admonished Complainant to comply with the Board's rules, Complainant ignored discovery requests and blatantly violated a hearing officer order. These and other actions by Complainant clearly "demonstrate a deliberate and pronounced disregard" for the Board and its rules.

As discussed above, the Board is not shy about imposing sanctions where circumstances warrant. In this case, Complainant has demonstrated an escalating pattern of disregard for these proceedings. What began as infractions of the procedural rules has graduated to violation of orders issued by the Hearing Officer and ultimately has prejudiced Flex-N-Gate as discussed above. Therefore, based upon the foregoing, Flex-N-Gate requests that the Board exercise its authority and dismiss Count I of the Complaint as a sanction for Complainant's actions.

III. ALTERNATIVELY, THE BOARD SHOULD GRANT SUMMARY JUDGMENT TO FLEX-N-GATE ON ITS AFFIRMATIVE DEFENSE.

In the alternative, if the Board declines to dismiss Count I as a sanction, the Board should grant summary judgment to Flex-N-Gate on its Affirmative Defense.

On October 20, 2005, the Board issued an Order in this matter addressing, inter alia, Flex-N-Gate's assertion that it was not required to obtain a RCRA permit because of the operation of the WWTU exemption. The Board found that this issue would be properly pled as an affirmative defense and granted Flex-N-Gate leave to amend its Answer accordingly. See Board Oct. 20 Order at 20.

Pursuant to the Board's Order, Flex-N-Gate filed its Amended Answer on November 15, 2005. Part and parcel of Flex-N-Gate's Amended Answer was the elucidation of its WWTU argument as an affirmative defense to Count I of the Complaint. See Amended Answer at 11.

Complainant filed no response to Flex-N-Gate's Affirmative Defense. In response to Flex-N-Gate's Interrogatories, however, Complainant stated in relevant part as follows:

INTERROGATORY NO. 20: Please provide the name and address of each witness who will testify at any hearing in this matter and state the subject of each witness's testimony.

ANSWER: 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

See Flex-N-Gate's Interrogatories and Complainant's Amended Responses thereto, attached as Exhibits A and D. (Emphasis added.)

A. Background

1. Facts Pled in Flex-N-Gate's Affirmative Defense.

As just noted, Complainant never responded to Flex-N-Gate's Affirmative Defense. Thus, it is Flex-N-Gate's understanding that Complainant does not dispute the factual allegations contained therein. Those allegations are as follows:

- Flex-N-Gate's Guardian West facility relies in part on th[e] Wastewater Treatment Unit ("WWTU") exemption to the RCRA permit requirement.
- Flex-N-Gate's Guardian West facility contains tanks and other associated equipment in which wastewater is treated (the "facility WWTU").
- The facility WWTU treats wastewater generated by various processes at the Facility, including, but not limited to, wastewater from the "chrome plating line" (identified in paragraph four of Complainant's Complaint) which is the subject of this matter.
- Flex-N-Gate's Guardian West facility has been issued authorization to discharge treated wastewater from the facility WWTU to the Urbana Champaign Sanitary District pursuant to 35 Ill. Admin. Code § 310.
- The facility WWTU generates and accumulates a wastewater treatment sludge.
- The floor of the room at the Facility in which the plating line is located (the "Plating Room") is coated with an epoxy and is sloped towards the center of the room, where two concrete pits are located.
- The Plating Room floor is deliberately designed to convey material which falls from the plating line to the floor into the pits in the center of the floor.
- The pits are constructed of concrete and are stationary devices.
- Material that is collected in the pits in the Plating Room floor is conveyed to tanks for treatment via hard-piping and associated pumps and other ancillary equipment.

See Amended Answer at 14-15 (Affirmative Defense ¶¶9, 11-14, 16-19).

2. Additional Facts in Support of Flex-N-Gate's Motion for Summary Judgment on its Affirmative Defense.

As noted above, in response to discovery, Complainant stated that his current Complaint is “restricted to the issue of whether Respondent has violated the storage time requirements for hazardous waste under the catwalk” at its Facility. See discussion above. With this understanding, in addition to the facts set forth in Flex-N-Gate's Affirmative Defense – which Complainant apparently does not dispute – the following facts support Flex-N-Gate's Motion for Summary Judgment on its Affirmative Defense.

At the Facility, Flex-N-Gate primarily manufactures bumpers for vehicles. Complaint at ¶4. The manufacturing process includes a Nickel/Chromium Electroplating Line (“Electroplating Line”) in which steel bumpers are cleaned, electroplated with several layers of nickel, electroplated with chromium, and rinsed. Id. The cleaning, plating and rinsing operations take place in open-top tanks holding up to 10,000 gallons of various chemicals in water solution. Id. at ¶5. The tanks are arranged in two rows, with a catwalk between the rows to access the tops of the tanks. Id. The diagram attached hereto as Exhibit E roughly illustrates the layout of the Electroplating Line. Affidavit of Anthony Rice (“Rice Aff.”), attached hereto as Exhibit F, at ¶3.¹

The tanks are mounted on concrete piers above a sloped, coated concrete floor. Rice Aff. at ¶4; Complaint at ¶6. During the process of cleaning, plating, and rinsing, the bumpers are dipped into the first tank, raised up, moved into position above the next tank, dipped into that tank, etc. Rice Aff. at ¶5. When a bumper is removed from a tank, some amount of the solution which that tank contains remains on the bumper. Id. at ¶6. The

¹ Mr. Rice's executed affidavit will be substituted when it is received.

Electroplating Line is engineered so that when bumpers are being moved from tank to tank, the solution that remains on the bumpers after removal from a tank may fall from the bumpers and land on the floor of the room in which the Line is located (hereinafter "Plating Room"). Id. at ¶7. This process is intentional. Id. at ¶8. This is a standard design for plating operations. Affidavit of Kevin Jeffries ("Jeffries Aff.") attached hereto as Exhibit G, at ¶3.

The floor of the Plating Room is coated with epoxy and is sloped towards the center of the room, where two concrete "pits" are located in the floor. Rice Aff. at ¶9. The purpose of the slope of the floor is to direct the solution which falls from the bumpers and lands on the floor into the "pits" in the center of the floor. Id. at ¶10. The purpose of the coating on the floor is to make the floor impervious to the materials that fall on it so that such materials are directed into the "pits" rather than soaking into the floor. Id. at ¶11. At least part of the floor is hosed down each shift in order to wash any material that has fallen onto the floor into the "pits." Id. at ¶12.

A pump is located at each "pit," which pumps are used to transfer solution that falls onto the floor into piping which leads to equipment in which wastewater from the Facility is treated (see further discussion below). Id. at ¶13. These pumps do not run continuously. Id. at ¶14. Rather, a level indicator in each pit automatically actuates each pump when the material in the pit reaches a pre-determined level. Id. at ¶15. This normally occurs several times each day. Id. at ¶16. Thus, the longest period of time that material which falls to the floor would remain in the pit normally would be a few hours. Id. at ¶17.

Again, piping leads from the two “pits” in the center of the Plating Room floor to numerous pieces equipment in which wastewater from the Facility is treated. Id. at ¶13. The pieces of equipment normally involved in August 2004 (the sludge dryer since has been removed), the material out of which such equipment is constructed, and the purpose of each piece of equipment, are listed below in the order that wastewater enters each piece of equipment:

| Piece of Equipment | Material Out of Which the Equipment is Constructed | Purpose of Equipment |
|--------------------------------|---|---|
| Equalization Tank #1 | Fiberglass Reinforced Plastic (“FRP”) | Serves as a collection point for wastewater before it is transferred to the outside equalization tanks. |
| Outside EQ Tanks 1 and 2 | Mild Steel | These tanks serve as equalization (mixing) and surge storage during times when the WWTP could otherwise be overwhelmed with too much flow from the wet processes. |
| Chrome Reduction/PH Adjustment | FRP | PH adjusted and reducing agent added to reduce hexavalent chromium to trivalent chromium in preparation for hydroxide precipitation. |
| pH Adjustment | FRP | Caustic or acid is added to achieve optimum pH for precipitating dissolved cations. Reagents are also added here to begin the process of coagulation. |
| Flocculation Tank | Mild Steel | Large charged particles are added to “floc” smaller coagulated particles together so that solids will settle out in the Lamella. |
| Lamella | Mild Steel | Designed to physically separate solids from liquids. From here liquids flow to the sand filters and solids are pumped to the |

| | | |
|---|------------|---|
| | | sludge holding tank. |
| from the Lamella, liquids enter: | | |
| Sand Filters | Mild Steel | Serve as final “polishing” step for any lighter solids that may not settle out in Lamella. |
| Final pH Adjustment | FRP | If necessary, automatically adds acid or caustic to adjust pH to permit required limits prior to discharge to POTW. |
| from the Lamella, solids enter: | | |
| Sludge Holding Tank | Mild Steel | This Sludge Holding Tank serves to control the flow of sludge into the Filter Presses. |
| Filter Presses | Mild Steel | These Filter Presses dewater sludge. Liquids removed from the sludge is recirculated to equipment discussed above. |
| Sludge Dryer ² (prior to March 2005) | Mild Steel | This Dryer dewatered the sludge. |

Jeffries Aff. at ¶4. (All of the equipment in this table is referred to herein as the Facility’s “Wastewater Treatment Equipment.”)

All of this equipment is located on-site, within the boundaries of the Facility.

Jeffries Aff. at ¶6. The diagram attached hereto as Exhibit H roughly illustrates the layout of the wastewater treatment system. Id. at ¶7.

Following treatment in the Wastewater Treatment Equipment, liquids are discharged to a Publicly Owned Treatment Works (“POTW”) operated by the Cities of Champaign and Urbana, Illinois. Id. at ¶8; Complaint at ¶10. The wastewater treatment equipment also generates wastewater treatment sludge. Jeffries Aff. at ¶¶4,9. While this

² The Sludge Dryer was removed from the Facility in March 2005. Jeffries Aff., at ¶5.

sludge is located in the wastewater treatment equipment, Flex-N-Gate considers the sludge to be exempt from RCRA regulation. Id. at ¶11; discussion below. Following dewatering, sludge is placed into a satellite accumulation container in preparation for placement into 90-day accumulation containers, where it is accumulated before it is shipped off-site for recycling. Jeffries Aff. at ¶9. Attached hereto as Exhibit I is an example of a manifest by which Flex-N-Gate has had such sludge transported off-site recycling. Id. at ¶10.

B. Standard for Granting Summary Judgment

Summary judgment on an affirmative defense is proper:

[I]f the summary judgment movant is the defendant who has raised an affirmative defense . . . the materials need only establish the defendant's factual position on the affirmative defense raised. Once the movant has carried this burden, the respondent may not rely on the factual issues raised by the pleadings, but must submit affidavits or refer to depositions or admissions on file which present a contrary version of the facts. While parties opposing a summary judgment motion are not required to prove their case, they are under a duty to present a factual basis which would arguably entitle them to judgment in their favor, based on the applicable law.

Soderlund Bros. v. Carrier Corp., 278 Ill. App. 3d 606, 615, 663 N.E.2d 1, 7 (1st Dist.

1995) (upholding grant of summary judgment to defendant on affirmative defense).

(Citations omitted.)

Section 101.516(a) of the Board's procedural rules provides for the filing of Motions for Summary Judgment. See 35 Ill. Admin. Code § 101.516(a). In cases before the Board, as in cases before a Court, "[s]ummary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of

law.” Cassens and Sons, Inc. v. Illinois EPA, PCB No. 01-102, 2004 Ill. ENV LEXIS 635, at **11-12 (Ill.Pol.Control.Bd. Nov. 18, 2004) (citing Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998)); accord, 35 Ill. Admin. Code § 101.516(b).

In Cassens, the Board stated as follows regarding motions for summary judgment:

In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” Id. [i.e., Dowd & Dowd, Ltd., cited above] Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief “is clear and free from doubt.” Id., citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist 1994).

Cassens, 2004 Ill. ENV LEXIS at 11-12.

The Illinois Supreme Court’s Purtill decision, which the Board cites in Cassens, further emphasizes that “use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit.” Purtill, 111 Ill.2d at 240, 489 N.E.2d at 871 (citations omitted). The Supreme Court goes on as follows:

If a party moving for summary judgment supplies facts which, if not contradicted, would entitle such party to a judgment as a matter of law, the opposing party cannot rely on his pleadings alone to raise issues of material fact. Thus, facts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion.

Id. (Citations omitted.)

For purposes of a motion for summary judgment, a fact is “material” if it is “[r]elated to the essential elements of the cause of action” (Smith v. Neumann, 289 Ill.

App. 3d 1056, 1069, 682 N.E.2d 1245, 1254 (2d Dist. 1997) (citations omitted)); that is, if it will “affect the outcome of a party’s case.” Westbank v. Maurer, et al., 276 Ill. App. 3d 553, 562, 658 N.E.2d 1381, 1389 (2d Dist. 1995). Thus, as the Board has held, “[f]actual issues which are not material to the essential elements of the cause of action or defense, regardless of how sharply controverted, do not warrant the denial of summary judgment.” Environmental Site Developers, Inc. v. White & Brewer Trucking, Inc., PCB No. 96-180, 1997 Ill. ENV LEXIS 649, at **27-28 (Ill.Pol.Control.Bd. Nov. 20, 1997).

C. Argument

Again, Complainant’s claim is that Flex-N-Gate “violated the storage time requirements for hazardous waste under the catwalk” in the Plating Room at its Facility. See discussion above. As its affirmative defense to this claim, Flex-N-Gate has raised the WWTU exemption to the RCRA permitting requirement. That is, it is Flex-N-Gate’s position that:

- (1) the floor of the plating room (i.e., in Complainant’s language, the area where “hazardous waste” is located “under the catwalk”) is part of a WWTU;
- (2) there are no “storage time requirements” that apply to materials (hazardous waste or otherwise) contained in a WWTU;
- (3) therefore, Flex-N-Gate could not have violated, and did not violate, any “storage time requirements for hazardous waste under the catwalk”; and,
- (4) Flex-N-Gate’s management of waste in its WWTU is otherwise proper and does not require a RCRA permit.

1. The Facility's Wastewater Treatment System Meets the Definition of "Wastewater Treatment Unit" under RCRA.

Section 720.110 of the Board's regulations defines "wastewater treatment unit" as "a device of which the following is true":

It is part of a wastewater treatment facility that has an NPDES permit pursuant to 35 Ill. Adm. Code 309 or a pretreatment permit or authorization to discharge pursuant to 35 Ill. Adm. Code 310; and

It receives and treats or stores an influent wastewater that is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103; and

It meets the definition of tank or tank system in this Section.

35 Ill. Admin. Code § 720.110.

Thus, the equipment that Flex-N-Gate uses to treat its plating waste is a "wastewater treatment unit" under RCRA if it satisfies the following three elements:

- (1) It is part of a wastewater treatment facility that has
 - (a) an NPDES permit pursuant to 35 Ill. Adm. Code 309 or
 - (b) a pretreatment permit or authorization to discharge pursuant to 35 Ill. Adm. Code 310; and
- (2) It
 - (a) receives and treats or stores an influent wastewater that is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or
 - (b) generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or
 - (c) treats or stores a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103; and

- (3) It meets the definition of tank or tank system.

Id.

Flex-N-Gate's wastewater treatment system satisfies each of these elements.

- a. The Wastewater Treatment Equipment "is Part of a Wastewater Treatment Facility that has . . . Authorization to Discharge Pursuant to 35 Ill. Adm. Code 310."

Again, the first element of the definition of WWTU is (in relevant part) whether a device used to treat wastewater "is part of a wastewater treatment facility that has . . . authorization to discharge pursuant to 35 Ill. Adm. Code [Part] 310." The equipment that the Facility uses to treat wastewater satisfies this element.

First, this equipment is "part of a wastewater treatment facility." For purposes of the definition of WWTU, the term "facility" means "[a]ll contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste." 35 Ill. Admin. Code § 720.110. As discussed *infra*, the equipment that makes up the Facility's wastewater treatment system is all located on-site, and generates, accumulates and stores a wastewater treatment sludge that is a hazardous waste. Thus, that equipment is part of a "facility."

Second, the Facility has an "authorization to discharge pursuant to 35 Ill. Adm. Code [Part] 310." Among other things, Part 310 of the Board's regulations "authorize[s] POTWs to issue authorizations to discharge to industrial users." 35 Ill. Admin. Code § 310.103(b). An "[a]uthorization to discharge" is:

an authorization issued to an industrial user by a POTW that has an approved pretreatment program. The authorization may consist of a permit, license, ordinance or other mechanism as specified in the approved pretreatment program.

35 Ill. Admin. Code § 310.110.

Complainant admits in his Complaint that the Facility discharges “[t]reated wastewater . . . to a sanitary sewer owned by the Urbana Champaign Sanitary District [“UCSD”].” Complaint at 2, ¶10. Accord, Jeffries Aff. at ¶8. The wastewater that the Facility treats and discharges to the UCSD includes wastewater from the Plating Room floor. Id. at ¶12. And, the UCSD is a POTW; that is, it comprises “devices and systems used in the storage, treatment, recycling, and reclamation of municipal or industrial wastewater,” which devices and systems are owned by a “unit of local government,” in this case, the Cities of Urbana and Champaign, Illinois. See Exhibit J (Illinois EPA Public Notice and NPDES Fact Sheet regarding UCSD); 35 Ill. Admin. Code § 310.110 (definitions of “POTW,” “treatment works”). Finally, the UCSD has authorized Flex-N-Gate’s discharge. See UCSD authorization, a copy of which is attached hereto as Exhibit K. Jeffries Aff. at ¶13.

Thus, the equipment that treats the Facility’s plating waste satisfies the first element of the definition of WWTU because it “is part of a wastewater treatment facility that has . . . authorization to discharge pursuant to 35 Ill. Adm. Code [Part] 310.” See 35 Ill. Admin. Code § 720.110 (defining WWTU).

- b. The Equipment “Generates and Accumulates a Wastewater Treatment Sludge Which is a Hazardous Waste as Defined in 35 Ill. Adm. Code 721.103.”

The second element of the definition of “wastewater treatment unit” is, in relevant part, whether the equipment “generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103.” See 35 Ill. Admin. Code § 720.110. The equipment here also satisfies this element.

As noted above, the Facility’s wastewater treatment processes generate and accumulate wastewater treatment sludge. Jeffries Aff. at ¶¶4, 9. As discussed below, this sludge is a hazardous waste as defined in 35 Ill. Adm. Code § 721.103. Id. at ¶14; accord, Complaint at 2, ¶10.

Section 721.103(a) provides in relevant part that:

A solid waste, as defined in Section 721.102, is a hazardous waste if the following is true of the waste:

- 1) It is not excluded from regulation as a hazardous waste under Section 721.104(b); and
- 2) It meets any of the following criteria:
 - * * *
 - B) It is listed in Subpart D of this Part and has not been excluded from the lists in Subpart D of this Part under 35 Ill. Adm. Code 720.120 and 720.122.

35 Ill. Admin. Code § 721.103(a).

The Facility’s wastewater treatment sludge “is not excluded from regulation as a hazardous waste under Section 721.104(b).” See 35 Ill. Admin. Code § 721.104(b).

Further, the Facility's wastewater treatment sludge "is listed in Subpart D of" Part 721.

Specifically, Section 721.131(a) lists the following as "F006" hazardous waste:

Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

35 Ill. Admin. Code § 721.131(a).

As discussed above, the plating process at issue involves electroplating steel bumpers with nickel and chromium. Complaint, ¶4. Thus, the Facility's wastewater treatment sludge is "from electroplating operations," and the exceptions in Section 721.121(a) do not apply.

Finally, the Facility's wastewater treatment sludge "has not been excluded from the lists in Subpart D of this Part under 35 Ill. Adm. Code 720.120 and 720.122." Jeffries Aff. at ¶15. The Board can take official notice that Flex-N-Gate has not applied to the Board for a site-specific rule or a delisting of this waste under Section 720.120 or Section 720.122. 35 Ill. Admin. Code § 101.630.

Thus, again, the equipment here satisfies the second element of the definition of "wastewater treatment unit" because it "generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103."

c. The Equipment "Meets the Definition of Tank or Tank System."

The third element of the definition of "wastewater treatment unit" is whether the equipment at issue "meets the definition of tank or tank system in" Section 720.110. 35

Ill. Admin. Code § 720.110. The Facility's Wastewater Treatment Equipment meets these definitions.

Section 720.110 defines "tank" as:

a stationary device, designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

Id.

Section 720.110 defines "tank system" as:

a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

Id.

For purposes of the definition of "tank system," Section 720.110 defines "ancillary equipment" as:

any device, including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tanks, between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

Id.

As discussed above, the wastewater at the Facility is treated in several pieces of equipment. Jeffries Aff. at ¶4. This equipment meets the definition of "tank," because:

- (1) it is stationary;
- (2) it is "designed to contain an accumulation of hazardous waste," i.e., the F006 sludge that the treatment of the wastewater creates;
- (3) it is "constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic)," in this case, Fiberglass Reinforced Plastic and steel; and,

- (4) these “nonearthen materials . . . provide structural support.”

Id. at ¶16.

Further, the coated and sloped floor of the plating room, the pit in the center of that floor, the pump that is contained in that pit, the pipes that lead from the pit to the Wastewater Treatment Equipment, all piping between the pieces of Wastewater Treatment Equipment, and the piping from the Wastewater Treatment Equipment to the connection with the UCSD, meet the definition of “ancillary equipment,” because they all constitute “device[s] . . . used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tanks, between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.” See 35 Ill. Admin. Code § 720.110 (definition of “ancillary equipment”). Again,

- the floor of the Plating Room is coated and sloped in order to direct solution which falls onto the floor during the plating process into the pit in the center of the floor (i.e., to “control the flow” of this material “from its point of generation to storage or treatment tanks”);
- the pit in the center of the Plating Room Floor exists in order to contain Plating Room floor wastewater until it is pumped into pipes that lead to the equipment in which the wastewater is treated (again, to “distribute . . . or control the flow” of the material);
- the pump located in that pit exists in order to “distribute” material from the pit into those pipes (the definition of “ancillary equipment” specifically references “pumps”); and,
- the piping that leads from the pit to the Wastewater Treatment Equipment, and between the Wastewater Treatment Equipment, and from the Wastewater Treatment Equipment to the UCSD “control[s] the flow” of the material “between hazardous waste storage and treatment tanks . . . to a point of shipment for disposal off-site.” i.e., to the connection with UCSD (the definition of ancillary equipment specifically references “piping”).

See Background discussion above.

Thus, all of this equipment together meets the definition of “tank system,” i.e., “a hazardous waste storage or treatment tank” – the Wastewater Treatment Equipment – “and its associated ancillary equipment” – the plating room floor, the pits, the pumps, and the piping. Therefore, this equipment satisfies the third element of the definition of wastewater treatment unit.

d. The Equipment Constitutes a Wastewater Treatment Unit.

Complainant has not taken a position regarding whether the equipment discussed above constitutes a WWTU. Rather, Complainant has stated:

so far as complainant is concerned, the spilled acid was contained and washed down to a treatment unit that was designed to handle this flow. . . . The complaint does not allege that this is the unit which causes the facility to be RCRA regulated, nor does the complaint take a position as to whether the unit might be exempted from regulation as a “wastewater treatment unit” or “elementary neutralization unit.”

Complainant’s Response to Motion to Dismiss, ¶¶7.a., b.

As discussed above, however, all of this equipment together does constitute a WWTU for purposes of RCRA.

2. No “Storage Time Requirements” Apply to Waste Contained in a WWTU.

RCRA allows generators of hazardous waste to manage that hazardous waste in numerous ways without triggering RCRA permitting requirements or other RCRA requirements. For example, Section 703.123(e) lists “[a]n owner or operator of an elementary neutralization unit or wastewater treatment unit” as a person that is “not required to obtain a RCRA permit.” 35 Ill. Admin. Code § 703.123(e). And, while Part 725 contains “Interim Status Standards for Owners and Operators of Hazardous Waste

Treatment, Storage, and Disposal Facilities,” Section 725.110(c) lists numerous methods by which hazardous waste can be managed as to which Part 725 “does not apply,” including management in a WWTU. 35 Ill. Admin. Code § 725.101(c)(10). Accord 35 Ill. Admin. Code § 724.101(g).

Some of the methods by which generators can manage hazardous waste, without triggering permitting and other requirements, have time limits. Specifically, 35 Ill. Admin. Code § 722.134 imposes such time limits (e.g., 90 days in some cases) where:

The waste is placed in or on one of the following types of units, and the generator complies with the applicable requirements:

- A) In containers, . . . ;
- B) In tanks, . . . ;
- C) On drip pads, . . . ;or,
- D) In containment buildings

35 Ill. Admin. Code § 722.134(a)(1).

The floor of the Plating Room at Flex-N-Gate’s facility is not a “container,” a “tank,” a “drip pad,” or a “containment building.” Rather, it is part of a WWTU. See discussion above; compare 35 Ill. Admin. Code § 720.110 (defining “container,” “tank,” “drip pad,” “containment building,” and “wastewater treatment unit.”) Thus, no accumulation times that Section 722.134 imposes on these other methods of managing hazardous waste apply to the floor of the plating room.

Further, it is axiomatic that no accumulation time limit applies to a WWTU. USEPA’s Hotline Questions and Answers, February 1995 (attached hereto as Exhibit L) states:

1. Status of WWTUs/ENUs at Generator Sites

A generator may treat hazardous waste without a permit or interim status in an on-site accumulation unit that is in compliance with the regulations in 262.34 (March 24, 1986; 51 FR 10146, 10168). If a generator chooses to treat hazardous waste in an on-site wastewater treatment unit or in an on-site elementary neutralization unit, must the generator comply with 262.34 [i.e., 722.134]?

No. A generator treating hazardous waste in an on-site wastewater treatment unit or in an on-site elementary neutralization unit, need not comply with 262.34, which is a conditional exemption from permitting requirements, because these units are already exempt from certain RCRA requirements. Specifically, wastewater treatment units and elementary neutralization units, as defined in 260.10, are exempt from RCRA treatment, storage, and disposal facility (TSDF) standards as well as from permitting standards (264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v)).

Id. (Emphasis added.)

Accord, USEPA Call Center Questions and Answers, June 2004, a copy of which is attached hereto as Exhibit M (“Treatment sludge generated from the management of characteristic wastewaters in a WWTU must be managed as hazardous once removed from the tank if it exhibits a characteristic of hazardous waste.”) (Emphasis added.)

3. As No “Storage Time Requirements” Apply to any “Waste under the Catwalk,” Flex-N-Gate Could Not Have Violated Any Such Requirements.

As just set forth, no “storage time requirements” apply to the Facility’s WWTU, which WWTU includes, but is not limited to, the floor of the Plating Room “under the catwalk.” Thus, to the extent that any hazardous waste is present there, as Complainant alleges, Flex-N-Gate could not have violated, and did not violate, any “storage time requirements” as to such waste. Accordingly, to the extent that Count I of Complainant’s Complaint is “restricted to” this issue, Flex-N-Gate has “establish[ed] [Flex-N-Gate’s] factual position on the affirmative defense raised”; that is, Flex-N-Gate has established

the facts necessary to prove that the floor of the Plating Room is part of a WWTU that is exempt from RCRA permitting requirements. See Soderlund Bros., 278 Ill. App. 3d at 615, 663 N.E.2d at 7 (setting out the procedure for summary judgment on an affirmative defense). Further, Flex-N-Gate is entitled to summary judgment as a matter of law, because no accumulation time limit applies to waste contained in a WWTU. Therefore, the Board should grant Flex-N-Gate summary judgment on Flex-N-Gate's Affirmative Defense.

4. Flex-N-Gate's Management of Waste in its WWTU is Otherwise Proper and Does Not Require a RCRA Permit.

Finally, as discussed above, Complainant has refused to answer Flex-N-Gate's discovery requests regarding why he contends that Flex-N-Gate's wastewater treatment system does not constitute a WWTU for purposes of RCRA. See discussion above. Because of this refusal, Flex-N-Gate does not know what facts are in dispute between the parties on this issue.

In response to this Motion, Complainant may change tack and take the position that Count I of his Complaint is not now "restricted to the issue of whether Respondent has violated the storage time requirements for hazardous waste under the catwalk," but somehow is based on some other alleged violation involving the Plating Room floor. This would conflict with Complainant's responses to Flex-N-Gates Interrogatories that he did answer. See Complainant's Amended Responses to Interrogatories, attached hereto as Exhibit D. If he does so, however, Flex-N-Gate still is entitled to summary judgment.

Count I of Complainant's Complaint asserts that Flex-N-Gate 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).” Complaint, Count 1, ¶1; Complainant’s Response to Motion to Dismiss, ¶¶3, 4. However, WWTUs are exempt from the RCRA permitting requirement. 35 Ill. Admin. Code § 703.123(e). Accord, 35 Ill. Admin. Code §§ 724.101(g), 725.101(c). In Flex-N-Gate’s case, its WWTU includes the floor of the Plating Room. See discussion above. Thus, as set forth in Flex-N-Gate’s Affirmative Defense, with regard to waste allegedly on that floor, Flex-N-Gate, by virtue of this exemption, cannot have violated Section 21(f) of the Act or 35 Ill. Admin. Code § 703.121(a) by operating without a RCRA permit, as Complainant alleges.

IV. CONCLUSION

WHEREFORE, Respondent FLEX-N-GATE CORPORATION, by its attorneys HODGE DWYER ZEMAN, moves the Illinois Pollution Control Board to sanction Complainant by dismissing Count I of his Complaint, or, alternatively, to grant Flex-N-Gate summary judgment on its Affirmative Defense, and to award FLEX-N-GATE CORPORATION all other relief just and proper in the premises.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: June 19, 2006

By: /s/ Thomas G. Safley
One of Its Attorneys

Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900
GWST:003/Fil/Motion for Sanctions

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

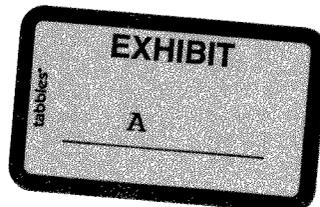
| | | |
|--------------------------|---|---------------|
| MORTON F. DOROTHY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 05-49 |
| |) | |
| FLEX-N-GATE CORPORATION, |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

FLEX-N-GATE CORPORATION'S INTERROGATORIES TO COMPLAINANT

NOW COMES Respondent FLEX-N-GATE CORPORATION ("Flex-N-Gate"), by its attorneys, HODGE DWYER ZEMAN, and pursuant to 35 Ill. Admin. Code § 101.620, propounds the following Interrogatories on Complainant, MORTON F. DOROTHY (hereinafter "Complainant"), to be answered in accordance with the Illinois Pollution Control Board's procedural rules within twenty-eight (28) days of the date of service hereof.

INSTRUCTIONS

- (a) The Board's procedural rules require you to serve your "answers and objections, if any" to the following Interrogatories on the undersigned "[w]ithin 28 days after" these Interrogatories are served on you. See 35 Ill. Admin. Code § 101.620(b).
- (b) The Board's procedural rules also require that you answer each of the following Interrogatories "separately and fully in writing under oath, unless it is objected to." See 35 Ill. Admin. Code § 101.620(b).



A verification statement (see 735 ILCS 5/1-109), signature line, and space for notarizing are provided for your use in meeting the requirement of Section 101.620(b) that Interrogatories be answered “under oath.”

(c) The Board’s procedural rules also require that you sign your answers to these Interrogatories and sign any objections you make to these Interrogatories. See 35 Ill. Admin. Code § 101.620(b).

(d) With respect to each Interrogatory, in addition to supplying the information asked for and identifying the specific documents referred to, please identify all documents to which you referred in preparing your answer thereto.

(e) If any document identified in an answer to an Interrogatory was, but is no longer, in your possession or subject to your custody or control, or was known to you, but is no longer in existence, please state what disposition was made of it or what became of it.

(f) If any document or statement is withheld from production hereunder on the basis of a claim of privilege or otherwise, please identify each such document or statement and the grounds upon which its production is being withheld.

(g) If you are unable or refuse to answer any Interrogatory completely for any reason, including, but not limited to, because of a claim of privilege, please so state, answer the Interrogatory to the extent possible, stating whatever knowledge or information you have concerning the portion of the Interrogatory which you do answer, and set forth the reason for your inability or refusal to answer more fully.

DEFINITIONS

As used in these Interrogatories, the terms listed below are defined as follows:

- (a) “Act” means the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*
- (b) “Board Regulations” means 35 Illinois Administrative Code §§101 *et seq.*
- (c) “Document” or “documents” means any of the following of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control: any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation correspondence, memoranda, notes, desk calendars, diaries, statistics, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, inter-office and intra-office communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments to any of the foregoing; any correspondence, databases, spreadsheets, electronic mail or “e-mail” messages, or other information of any kind contained in any computer or other such storage system; and any audiotapes, videotapes, tape recordings, transcripts, or graphic or oral records or representations of any kind.
- (d) “Hazardous Waste” means hazardous waste as defined by Part 721 of the Board Regulations.

(e) "Identify," "identity" and "identification," when used to refer to any entity other than a natural person, mean to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association).

(f) "Identify," "identity" and "identification," when used to refer to a natural person, mean to state the following:

1. The person's full name and present or last known home address, home telephone number, business address and business telephone number;
2. The person's present title and employer or other business affirmation; and
3. The person's title and employer at the time of the actions at which each Interrogatory is directed.

(g) "Identify," "identity" and "identification," when used to refer to a document, mean to state the following:

1. The subject of the document;
2. The title of the document;
3. The type of document (e.g., letter, memorandum, telegram, chart);
4. The date of the document, or if the specific date thereof is unknown, the month and year or other best approximation of such date;
5. The identity of the person or persons who wrote, contributed to, prepared or originated such document; and
6. The present or last known location and custodian of the document.

(h) "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable whether or not such association has a separate juristic existence in its own right.

(i) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these Interrogatories are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman, or otherwise.

(j) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(k) "You" means Complainant Morton F. Dorothy.

(l) "Flex-N-Gate's Facility" means the property operated by Flex-N-Gate at 601 Guardian Drive in Urbana, Illinois, as alleged in paragraph three of your Complaint.

(m) "Wastewater Treatment Equipment" means the following equipment located at the Facility that is used to treat wastewater: equalization tanks, reduction and adjustment tanks, flocculation tank, lamella, sand filters, sludge holding tanks, and filter presses.

(n) "Wastewater Treatment Unit" means waste water treatment unit as defined in the Board Regulations at 35 Ill. Admin. Code § 720.110.

INTERROGATORIES

INTERROGATORY NO. 1: In your Complaint you allege that "Respondent is operating a hazardous waste treatment and storage facility...." (Complaint Pg. 4 ¶ 1.)

Please identify what material you are referring to in this statement that you allege constitutes "hazardous waste" as to which Flex-N-Gate is "operating a hazardous waste treatment and storage facility," and further state:

- (a) the nature of the material;
- (b) the approximate quantity of the material;
- (c) the manner or method by which you allege Flex-N-Gate is storing, treating, and/or disposing of the material; and
- (d) the approximate location of the material at Flex-N-Gate's Facility.

ANSWER:

INTERROGATORY NO. 2: In your Complaint you refer to "...the waste under the catwalk..." (Complaint Pg. 4 ¶ 2.) Please clarify what status you allege this material holds (i.e. do you allege that this material is hazardous waste?) and whether this is the material upon which you base your allegations in Count I of your Complaint that Flex-N-Gate has violated Section 21(f) of the Act and 35 Ill. Admin. Code § 703.12(a).

ANSWER:

INTERROGATORY NO. 3: Count I of your Complaint alleges that Flex-N-Gate's Facility is operating "...without a RCRA permit or interim status, in violation of Section 21(f) of the Act and 35 Ill. Adm. Code § 703.121(a)." (Complaint Pg. 4 ¶ 1.) On

what basis do you allege that Flex-N-Gate's facility is required to operate either with a permit or under interim status?

ANSWER:

INTERROGATORY NO. 4: In your Complaint you state, "35 Ill. Adm. Code 103.400 et seq. Include [sic] procedures under which the Board would supervise the issuance of a RCRA permit." (Complaint Pg. 4 ¶ 4.) Please state how this allegation relates, if at all, to the violation you are alleging under Section 21(f) of the Act and under 35 Ill. Admin. Code § 703.121(a) in Count I of your Complaint.

ANSWER:

INTERROGATORY NO. 5: Flex-N-Gate contends that its Wastewater Treatment Equipment (as defined above) generates and accumulates a sludge that satisfies the definition of "wastewater treatment sludge" as that term is used in the definition of "wastewater treatment unit" contained in 35 Ill. Admin Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree including the specific portions of the definition of "sludge" at 35 Ill. Admin. Code § 720.110, and/or the definition of "hazardous waste" at 35 Ill. Admin. Code § 721.103, which you believe have not been satisfied.

ANSWER:

INTERROGATORY NO. 6: Flex-N-Gate contends that the Wastewater Treatment Equipment at its Facility meets the definition of “tank” or “tank system” as defined at 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree including the specific portion of the definition of “tank or tank system” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY NO. 7: Flex-N-Gate contends that the floor of the room in which the “chrome plating line” is located at the Facility, as alleged in paragraphs four through six of your Complaint (hereinafter “Plating Room Floor”), is sloped towards the center of the room, where two concrete “pits” are located in the floor. Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER:

INTERROGATORY NO. 8: Flex-N-Gate contends that the purpose of the slope of the Plating Room Floor is to direct any solution which falls from the bumpers proceeding through the “chrome plating line,” or otherwise falls from the “chrome plating line,” into the “pits” in the Plating Room Floor. Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER:

INTERROGATORY NO. 9: Flex-N-Gate contends that the Plating Room Floor meets the definition of “ancillary equipment” as defined at 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree including the specific portion of the definition of “ancillary equipment” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY 10: Flex-N-Gate contends that the “pits” located in the Plating Room Floor hold solution which falls from the “chrome plating line” until the solution can be transferred to the Wastewater Treatment Equipment, via direct connection. Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER:

INTERROGATORY NO. 11: Flex-N-Gate contends that the “pits” located in the Plating Room Floor meet the definition of “ancillary equipment” as defined in 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the

basis upon which you disagree including the specific portion of the definition of “ancillary equipment” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY NO. 12: Flex-N-Gate contends that a pump is located at each “pit” in the Plating Room Floor, which pumps are used to transfer solution that falls onto the floor and is subsequently captured in each pit, via hard-piping, to the Wastewater Treatment Equipment. Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER:

INTERROGATORY NO. 13: Flex-N-Gate contends that the pump located at each “pit” in the Plating Room Floor meets the definition of “ancillary equipment” as defined at 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree, including the specific portion of the definition at “ancillary equipment” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY NO. 14: Flex-N-Gate contends that piping leads from the “pits” located in the Plating Room Floor to the “Wastewater Treatment Equipment.” Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER:

INTERROGATORY NO. 15: Flex-N-Gate contends that the pipes that lead from the pits in the Plating Room Floor to the Wastewater Treatment Equipment meet the definition of “ancillary equipment” as defined at 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree including the specific portion of the definition of “ancillary equipment” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY NO. 16: Flex-N-Gate contends that wastewater at the Facility is transferred through piping between the various pieces of equipment included in the definition of “Wastewater Treatment Equipment” set forth above. Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER:

INTERROGATORY NO. 17: Flex-N-Gate contends that all piping through which wastewater at the Facility is transferred between the various pieces of equipment included in the definition of “Wastewater Treatment Equipment” set forth above meets the definition of “ancillary equipment” as defined at 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree including the specific portion of the definition of “ancillary equipment” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY NO. 18: Flex-N-Gate contends that piping is used to discharge treated wastewater from the Wastewater Treatment Equipment to the Urbana Champaign Sanitary District. Do you disagree with this contention, and, if so, please state the basis upon which you disagree.

ANSWER

INTERROGATORY NO. 19: Flex-N-Gate contends that the piping from the Wastewater Treatment Equipment to the Facility’s connection with the Urbana-Champaign Sanitary District meets the definition of “ancillary equipment” as defined at 35 Ill. Admin. Code § 720.110. Do you disagree with this contention, and, if so, please state the basis upon which you disagree including the specific portion of the definition

“ancillary equipment” contained at 35 Ill. Admin. Code § 720.110 which you believe has not been satisfied.

ANSWER:

INTERROGATORY NO. 20: Please provide the name and address of each witness who will testify at any hearing in this matter and state the subject of each witness’s testimony.

ANSWER:

INTERROGATORY NO. 21: Please provide the name and address of each opinion witness who will offer any testimony or opinion on behalf of Complainant, and state:

(a) The subject matter on which the opinion witness is expected to testify;

(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of the witness, if any;

(c) The qualifications of each opinion witness, including a curriculum vitae and/or résumé, if any; and

(d) The identity of any written reports of the opinion witness regarding this occurrence.

ANSWER:

INTERROGATORY NO. 22: Please list the names and addresses of all other persons (other than yourself and persons heretofore listed) who purport to have knowledge, or with whom you have communicated, in writing or otherwise – including, but not limited to, representatives of the United States Environmental Protection Agency, the Illinois Environmental Protection Agency, and/or any other governmental body or agency other than the Illinois Pollution Control Board – relating to your contention in Count I of your Complaint that Flex-N-Gate has violated Section 21(f) of the Environmental Protection Act and/or 35 Ill. Admin. Code § 703.121(a).

ANSWER:

INTERROGATORY NO. 23: Please identify all persons who assisted with the preparation of your responses to these Interrogatories, whom you or your agents consulted in the preparation of your responses to these Interrogatories, and/or who otherwise provided any information used in the preparation of your responses to these Interrogatories, and indicate the Interrogatories with which each such person assisted or was consulted or provided information.

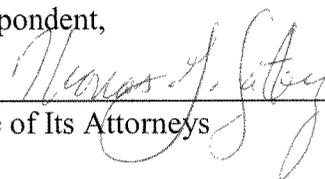
ANSWER:

INTERROGATORY NO. 24: Please identify any statements, information and/or documents or other evidence known to you and requested by any of the foregoing Interrogatories or by any Request for Production propounded on you by Respondent which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory or Request for Production, specify the legal basis for the claim.

ANSWER:

Respectfully submitted,

FLEX-N-GATE CORPORATION
Respondent,

By: 
One of Its Attorneys

Dated: January 18, 2006

Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

GWST:003/Fil/Interrogatories

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--------------------------|---|---------------|
| MORTON F. DOROTHY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 05-49 |
| |) | |
| FLEX-N-GATE CORPORATION, |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

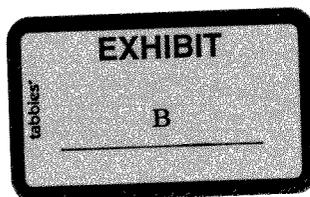
**FLEX-N-GATE CORPORATION'S
REQUESTS FOR PRODUCTION TO COMPLAINANT**

NOW COMES Respondent FLEX-N-GATE CORPORATION ("Flex-N-Gate"), by its attorneys, HODGE DWYER ZEMAN, and pursuant to Section 101.616 of the Illinois Pollution Control Board's ("Board") procedural rules, 35 Ill. Admin. Code § 101.616, propounds the following Requests for Production on Complainant Morton F. Dorothy, to be answered within 28 days after these Requests for Production are served on Complainant.

INSTRUCTIONS

(a) Please produce all documents requested herein for copying at the offices of HODGE DWYER ZEMAN, 3150 Roland Avenue, Springfield, Illinois, within twenty-eight (28) days of the date of service of these Requests for Production, or provide copies of the documents requested herein to counsel for Flex-N-Gate by that date.

(b) If any document was previously in your possession or subject to your custody or control that these Requests for Production would require you to produce, but is no longer in your possession or subject to your custody or control, or was known to



you, but is no longer in existence, please state what disposition was made of it or what became of it.

(c) If any document is withheld from production hereunder on the basis of a claim of privilege or otherwise, please identify each such document and the grounds upon which its production is being withheld.

(d) If you are unable or refuse to respond to any Request for Production completely for any reason, including, but not limited to, because of a claim of privilege, so state, answer the Request for Production to the extent possible, stating whatever knowledge or information you have concerning the portion of the Request for Production which you do answer, and set forth the reason for your inability or refusal to answer more fully.

DEFINITIONS

As used in these Requests for Production, the terms listed below are defined as follows:

(a) "Document" or "documents" means any of the following of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control: any writing of any kind, including originals and all nonidentical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation correspondence, memoranda, notes, desk calendars, diaries, statistics, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed

matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments to any of the foregoing; any spreadsheets, databases, electronic mail messages, or other information of any kind contained in any computer or other such storage system; and any audiotapes, videotapes, tape recordings, transcripts, or graphic or oral records or representations of any kind.

(b) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these Requests are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman, or otherwise.

(c) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(d) "You" means Complainant Morton F. Dorothy.

(e) "Flex-N-Gate's Facility" means the property operated by Flex-N-Gate at 601 Guardian Drive in Urbana, Illinois, as alleged in paragraph three of your Complaint.

REQUESTS FOR PRODUCTION

1. Please produce all correspondence or other documents of any kind relating to this matter exchanged between you and any lay witness whom you intend to, or may call to, testify at any hearing in this matter.

2. Please produce all correspondence or other documents of any kind relating to this matter exchanged between you and any independent expert witness whom you intend to call to testify at any hearing in this matter.

3. Please produce all correspondence or other documents of any kind relating to this matter exchanged between you and any controlled expert witness whom you intend to call to testify at any hearing in this matter.

4. Please produce any and all reports or other documents relating to this matter generated by any independent or controlled expert whom you intend to call to testify at any hearing in this matter.

5. Please produce a current résumé and curriculum vitae for each independent or controlled expert whom you intend to call to testify at any hearing in this matter.

6. Please produce copies of all correspondence, email messages, or other documents of any kind exchanged between you and the United States Environmental Protection Agency relating to this matter.

7. Please produce copies of all correspondence, e-mail messages, or other documents of any kind exchanged between you and the Illinois Environmental Protection Agency relating to this matter.

8. Please produce copies of all correspondence, e-mail messages, or other documents of any kind exchanged between you and any other governmental body or agency, other than the Illinois Pollution Control Board, relating to this matter.

9. Please produce any and all other documents of any kind which relate in any way to your allegation that Flex-N-Gate has violated Section 21(f) of the Act and/or 35 Ill. Admin. Code § 703.121(a), as alleged in Count I of your Complaint.

10. Please produce all exhibits which you intend to, or may seek to, enter into evidence or use as a demonstrative exhibit at any hearing in this matter.

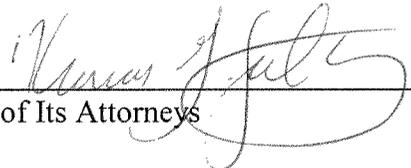
11. Please produce any photographs, motion pictures, videotapes, maps, drawings, or other visual or pictorial representations of any kind of the Flex-N-Gate Facility at issue in this matter or otherwise relating in any way to the allegations contained in your Complaint.

12. Please produce all documents, other than those produced in response to the Requests for Production set forth above, which you identified in response to Flex-N-Gate's Interrogatories.

13. Please produce all documents or other items of any kind, other than those produced in response to the Requests for Production set forth above, which you consulted or to which you referred in preparing your responses to Flex-N-Gate's Interrogatories to you or your responses to these Requests for Production.

Respectfully submitted,

FLEX-N-GATE CORPORATION
Respondent,

By: 
One of Its Attorneys

Dated: January 18, 2006

Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

GWST:003/Fil/Requests for Production

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

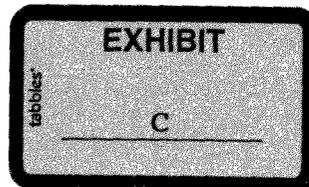
MORTON F. DOROTHY,)
)
 Complainant,)
)
 vs.)
)
 FLEX-N-GATE CORPORATION,)
 an Illinois Corporation,)
)
 Respondent.)

No. PCB 05-049

RESPONSE TO INTERROGATORIES

Complainant Morton F. Dorothy makes the following 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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is a "wastewater treatment unit".
 6. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is a "tank" or

"tank system" (other than the tanks involved in the production process).

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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
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. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
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, Illinois Environmental Protection Agency, 2125 South First Champaign IL
 - c. Holly Hirschert, Illinois Environmental Protection Agency, 2125 South First Champaign IL
 - d. Bill Keller, Champaign County Emergency Services and Disaster Agency, 1905 East Main Urbana IL 61802
 - e. Unknown person, Urbana Fire Department, 400 S. Vine, Urbana, IL 61801
 - f. Peggy A. Zweber, Area Director, U.S. Dept. of Labor, Occupational Safety and Health Administration, 2918 Willows Knolls Rd, Peoria IL 61614.
 - g. Brian Bothast, Acting Area Director, U.S. Dept. of Labor, Occupational Safety and Health Administration, 2918 Willows Knolls Rd, Peoria IL 61614.
 - h. Sue Ellen DeManche, U.S. Dept. of Labor, Occupational Safety and Health Administration, 2918 Willows Knolls Rd, Peoria IL 61614.
 - i. Mr. Thomas V. Skinner, Regional Administrator, US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604
 - j. Gary Westefer, US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

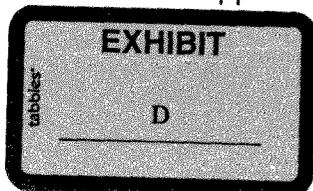
MORTON F. DOROTHY,)
)
 Complainant,)
)
 vs.)
)
 FLEX-N-GATE CORPORATION,)
 an Illinois Corporation,)
)
 Respondent.)

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.

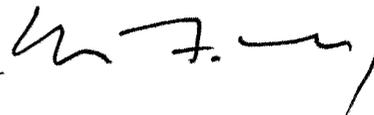
21. Complainant has no funds with which to employ outside expert witnesses. Complainant sees no need at this time for expert testimony. Complainant is, however, an expert on much of the factual material at issue, and will, if necessary, testify as an expert witness. In a citizen enforcement action, the 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)
)
 COUNTY OF CHAMPAIGN) SS

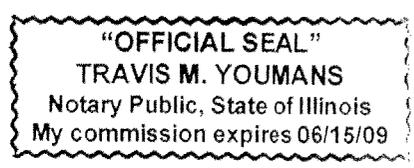
Morton F. Dorothy, being first duly sworn on oath, deposes and states, under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth above in response to Respondent's Interrogatories are true and correct, except as to matters herein stated to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

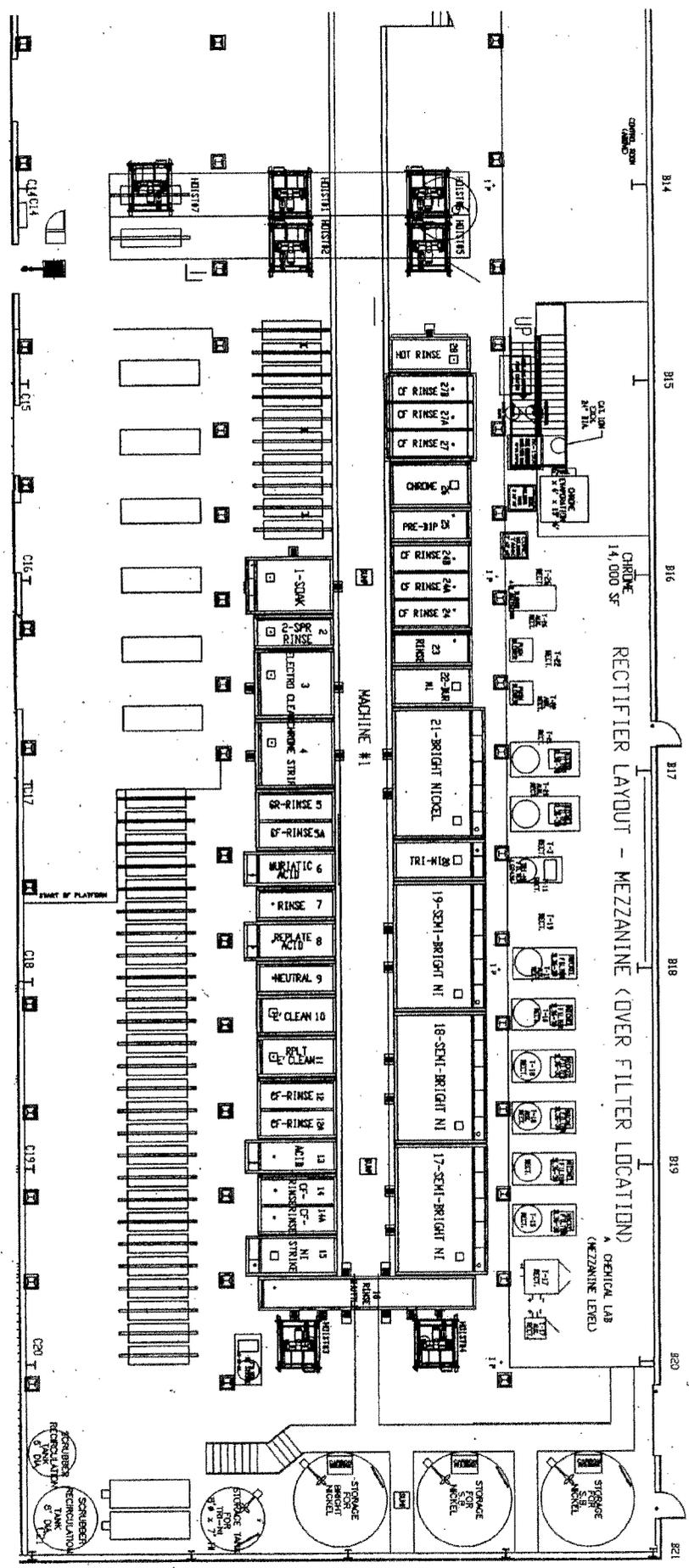
Morton F. Dorothy 
 Morton F. Dorothy, Complainant

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)





EXHIBIT

tabbles

E

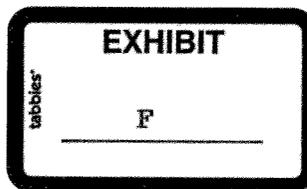
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

| | | |
|--------------------------|---|-----------|
| MORTON F. DOROTHY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 05-49 |
| |) | |
| FLEX-N-GATE CORPORATION, |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

AFFIDAVIT OF ANTHONY RICE

Anthony Rice, being first duly sworn, deposes and states under oath, and if sworn as a witness, would testify, as follows:

1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by Flex-N-Gate Corporation ("Flex-N-Gate") as Plating Manager at the facility at issue in the above-captioned matter.
3. The diagram attached to Flex-N-Gate's Motion for Sanctions or, in the Alternative, for Summary Judgment ("Motion for Sanctions"), as Exhibit E roughly illustrates the layout of the Electroplating Line at the Facility.
4. The tanks that make up the Electroplating Line are mounted on concrete piers above a sloped, coated concrete floor.
5. During the process of cleaning, plating, and rinsing, the bumpers are dipped into the first tank, raised up, moved into position above the next tank, dipped into that tank, etc.
6. When a bumper is removed from a tank, some amount of the solution which that tank contains remains on the bumper.



7. The Electroplating Line is engineered so that when bumpers are being moved from tank to tank, the solution that remains on the bumpers after removal from a tank may fall from the bumpers and land on the floor of the room in which the Line is located (hereinafter "Plating Room").

8. This process is intentional.

9. The floor of the Plating Room is coated with epoxy and is sloped towards the center of the room, where two concrete "pits" are located in the floor.

10. The purpose of the slope of the floor is to direct the solution which falls from the bumpers and lands on the floor into the "pits" in the center of the floor.

11. The purpose of the coating on the floor is to make the floor impervious to the materials that fall on it so that such materials are directed into the "pits" rather than soaking into the floor.

12. At least part of the floor is hosed down each shift in order to wash any material that has fallen onto the floor into the "pits."

13. A pump is located at each "pit," which pumps are used to transfer solution that falls onto the floor into piping which leads to equipment in which wastewater from the Facility is treated.

14. These pumps do not run continuously.

15. Rather, a level indicator in each pit automatically actuates each pump when the material in the pit reaches a pre-determined level.

16. This normally occurs several times each day.

17. Thus, the longest period of time that material which falls to the floor would remain in the pit normally would be a few hours.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein 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.

FURTHER AFFIANT SAYETH NOT.

Anthony Rice

Subscribed and sworn to before
me this ____ day of _____, 2006.

Notary Public

GWST:003/Fil/Affidavit of Anthony Rice – Motion for Sanctions

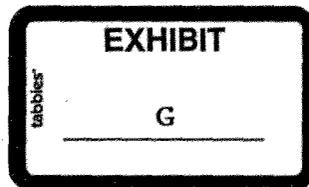
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

| | | |
|--------------------------|---|-----------|
| MORTON F. DOROTHY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 05-49 |
| |) | |
| FLEX-N-GATE CORPORATION, |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

AFFIDAVIT OF KEVIN JEFFRIES

Kevin Jeffries, being first duly sworn, deposes and states under oath, and if sworn as a witness, would testify, as follows:

1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed as Environmental Director for Flex-N-Gate Corporation ("Flex-N-Gate").
3. The electroplating line at the facility at issue in this matter ("Facility"), as described on pages 18 and 19 of Flex-N-Gate's Motion for Sanctions or, in the Alternative, for Summary Judgment ("Motion for Sanctions"), is a standard design for plating operations.
4. The table set forth at pages 20 and 21 of Flex-N-Gate's Motion for Sanctions accurately describes the pieces of equipment involved in treating wastewater at the Facility as of August 2004, the material out of which such equipment is/was constructed, and the purpose of each piece of equipment, in the order that wastewater enters each piece of equipment.



5. The sludge dryer referenced in that table was removed from the Facility in March 2005.

6. All of this equipment (hereinafter "Wastewater Treatment Equipment") is located on-site, within the boundaries of the Facility.

7. The diagram attached to Flex-N-Gate's Motion for Sanctions as Exhibit H roughly illustrates the layout of the wastewater treatment system.

8. Following treatment in the Wastewater Treatment Equipment, liquids are discharged to a Publicly Owned Treatment Works ("POTW") operated by the Cities of Champaign and Urbana, Illinois ("UCSD").

9. Following dewatering, sludge is placed into a satellite accumulation container in preparation for placement into 90-day accumulation containers, where it is accumulated before it is shipped off-site for recycling.

10. The document attached to Flex-N-Gate's Motion for Sanctions as Exhibit I is a true and accurate copy of a manifest by which Flex-N-Gate has had such sludge transported off-site recycling.

11. While the wastewater treatment sludge is located inside the equipment that is used to treat the Facility's wastewater, Flex-N-Gate considers the sludge to be exempt from RCRA pursuant to 35 Ill. Admin. Code § 703.123(e).

12. The wastewater that the Facility treats and discharges to the UCSD includes wastewater from the Plating Room floor.

13. Flex-N-Gate discharges to the UCSD pursuant to an authorization that UCSD issued to Flex-N-Gate, a copy of which authorization is attached to Flex-N-Gate's Motion for Sanctions as Exhibit K.

14. The sludge that the Facility's Wastewater Treatment Equipment generates is a hazardous waste as defined in 35 Ill. Admin. Code § 721.103.

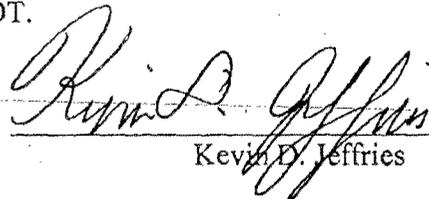
15. The Facility's wastewater treatment sludge "has not been excluded from the lists in Subpart D of this Part under 35 Ill. Adm. Code 720.120 and 720.122."

16. This Facility's Wastewater Treatment Equipment:

- (a) is stationary;
- (b) is "designed to contain an accumulation of hazardous waste," i.e., the F006 sludge that the treatment of the wastewater creates;
- (c) is "constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic)," in this case, Fiberglass Reinforced Plastic and steel; and,
- (d) these "nonearthen materials . . . provide structural support."

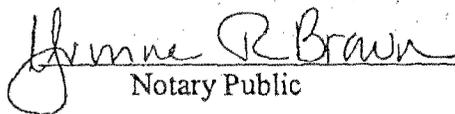
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

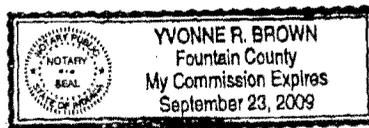


 Kevin D. Jeffries

Subscribed and sworn to before me this 16TH day of JUNE, 2006.



 Notary Public





STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY DIVISION OF LAND POLLUTION CONTROL

P.O. BOX 19276

SPRINGFIELD, ILLINOIS 62794-9276 (217) 782-6761

FOR SHIPMENT OF HAZARDOUS AND SPECIAL WASTE

State Form LPC 62 8/81 IL532-0610

PLEASE TYPE

(Form designed for use on elite (12-pitch) typewriter.)

EPA Form 8700-22 (Rev. 6-89)

Form Approved. OMB No. 2050-0039

| | | | | | |
|--|--|--|---------------------------------------|---|--|
| UNIFORM HAZARDOUS WASTE MANIFEST | | 1. Generator's US EPA ID No. ILR000061853 | Manifest Document No. 12804 | 2. Page 1 of 1 | Information in the shaded areas is not required by Federal law, but is required by Illinois law. |
| 3. Generator's Name and Mailing Address Guardian West P.O. Box 877 Urbana, IL 61803 | | Location If Different 601 Guardian Drive Urbana, IL 61801 | | By Generator's ID Number: ILR000061853 | |
| 4. *24 HOUR EMERGENCY AND SPILL ASSISTANCE NUMBERS* 800-424-9300 | | 6. US EPA ID Number NJD054126164 | | By Transporter's ID Number: NJD054126164 | |
| 5. Transporter 1 Company Name Freehold Cartage, Inc. | | 8. US EPA ID Number | | By Facility's ID Number: OHD986976348 | |
| 7. Transporter 2 Company Name | | 10. US EPA ID Number | | | |
| 9. Designated Facility Name and Site Address AGMET Metals, Inc. 7800 Medusa St. Oakwood Village, OH 44146 | | 10. US EPA ID Number OHD986976348 | | | |
| 11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number) | | 12. Containers No. | 13. Total Quantity | 14. Unit Wt/Vol | |
| a. RQ, Hazardous Waste, Solid, n.o.s., 9, NA 3077, PG III (F006) | | | | | |
| b. | | | | | |
| c. | | | | | |
| d. | | | | | |
| 15. Special Handling Instructions and Additional Information ERG # 171 Generators Non-emergency phone 217-278-2355 | | 16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford. | | | |
| 17. Transporter 1 Acknowledgement of Receipt of Materials | | Printed/Typed Name Bruce Humphries | | Signature <i>[Signature]</i> | |
| 18. Transporter 2 Acknowledgement of Receipt of Materials | | Printed/Typed Name Leigha Feys | | Signature <i>[Signature]</i> | |
| 19. Discrepancy Indication Space | | 20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in item 19. | | Date | |
| | | Printed/Typed Name Leigha Feys - on behalf of | | Signature <i>[Signature]</i> | |

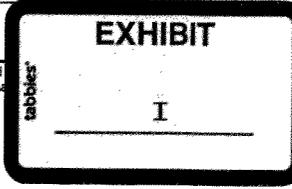
GENERATOR

TRANSPORTER

FACILITY

This Agency is authorized to require, pursuant to Illinois Revised Statutes Chapter 111 1/2, Section 1004 and 1004.1 that this information be submitted to the Agency by the generator. Failure to do so may result in a civil penalty against the owner of the facility of up to \$25,000 per day of violation. Failure to submit this information may result in a civil penalty against the owner of the facility of up to \$25,000 per day of violation and imprisonment up to 5 years. This form has been approved by the Forms Management Center.

COPY 1. TSD MAIL TO GENERATOR





11/19/03 2:27 PM

Rod R. Blagoje

Public Notices

Public Notice

NPDES Permit No. IL0031500
Notice No. RJH:03040301.dlk

Public Notice Beginning Date: May 9, 2003

Public Notice Ending Date: June 9, 2003

National Pollutant Discharge Elimination System (NPDES) Permit Program

PUBLIC NOTICE/FACT SHEET
of

Draft Modified NPDES Permit to Discharge Into Waters of the State

Public Notice/Fact Sheet Issued By:

Illinois EPA
Division of Water Pollution Control
Permit Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
217-782-0610

Name and Address of Discharger:

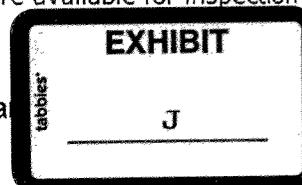
Urbana Champaign Sanitary District
Post Office Box 669
Urbana, Illinois 61803

Name and Address of Facility:

Urbana Champaign SD NE STP
1100 East University Avenue
Urbana, Illinois
(Champaign County)

The Illinois Environmental Protection Agency (IEPA) has made a tentative determination to modify a NPDES Permit to discharge into the waters of the state and has prepared a draft modified Permit and associated fact sheet for the above named discharger. The Public Notice period will begin and end on the dates indicated in the heading of this Public Notice/Fact Sheet. All comments on the draft modified Permit and requests for hearing must be received by the IEPA by U.S. Mail, carrier mail or hand delivered by the Public Notice Ending Date. Interested persons are invited to submit written comments on the draft modified Permit to the IEPA at the above address. Commentors shall provide his or her name and address and the nature of the issues proposed to be raised and the evidence proposed to be presented with regards to those issues. Commentors may include a request for public hearing. Persons submitting comments and/or requests for public hearing shall also send a copy of such comments or requests to the Permit applicant. The NPDES Permit and notice numbers must appear on each comment page.

The modification request, engineer's review notes including load limit calculations, Public Notice/Fact Sheet, draft Permit, comments received, and other documents are available for inspection and may be



Public Notice/Fact Sheet -- Page 3 -- NPDES Permit No. IL0031500

This Permit contains an authorization to treat and discharge excess flow as follows:

Discharge Number and Name: 002 Excess Flow Outfall

| Parameter | | CONCENTRATION LIMITS mg/L | | Regulation |
|-------------------|---|---------------------------|-----------------|----------------|
| | | Daily Maximum | Monthly Average | |
| BOD ₅ | | | * | 40 CFR 133.102 |
| Suspended Solids | | | * | 40 CFR 133.102 |
| Fecal Coliform | Shall not exceed a geometric mean of 200 per 100 mL nor shall more than 10% of the samples during the month exceed 400 per 100 mL | | | 35 IAC 304.121 |
| pH | Shall be in the range of 6 to 9 Standard Units | | | 35 IAC 304.125 |
| Chlorine Residual | | 3.0 | | 35 IAC 302.208 |

*Concentration Limits (L) shall be determined as follows:

$$L = -15/23(D) + 49.565$$

Where: D = number of days of discharge per month
L = monthly average effluent limitation in mg/L

Discharge Number and Name: 003 Flood Protection Overflow (when the receiving stream is above elevation 700.50)

Load limits computed based on a design average flow (DAF) of 17.3 MGD (design maximum flow (DMF) of 34.6.

The effluent of the above discharge(s) shall be monitored and limited at all times as follows:

| Parameter | LOAD LIMITS lbs/day* DAF (DMF) | | | CONCENTRATION LIMITS mg/L | | | Regulation |
|-------------------|--|----------------|------------------|---------------------------|----------------|---------------|----------------------------------|
| | Monthly Average | Weekly Average | Daily Maximum | Monthly Average | Weekly Average | Daily Maximum | |
| CBOD ₅ | 1,443 (2,886) | | 2,886 (5,771) | 10 | | 20 | 35 IAC 304.120 40 CFR 133.102 |
| Suspended Solids | 1,731 (3,463) | | 3,463 (6,926) | 12 | | 24 | 35 IAC 304.120 40 CFR 133.102 |
| pH | Shall be in the range of 6 to 9 Standard Units | | | | | | 35 IAC 304.125 |
| Chlorine Residual | | | | | | 0.05 | 35 IAC 302.208 |
| Ammonia Nitrogen: | | | | | | | |
| March | 303 (606) | 765 (1,529) | 1,385 (2,770) | 2.1 | 5.3 | 9.6 | 35 IAC 355 and |
| April-October | 216 (433) | | 433 (866) | 1.5 | | 3.0 | 35 IAC 302 |
| Nov.-Feb. | 346 (693) | | 693 (1,385) | 2.4 | | 4.8 | |

*Load Limits are calculated by using the formula: $8.34 \times (\text{Design Average and/or Maximum Flow in MGD}) \times (\text{Applicable Concentration in mg/L})$.

Public Notice/Fact Sheet -- Page 2 -- NPDES Permit No. IL0031500

Application is made for the existing discharges which are located in Champaign County, Illinois. The following information identifies the discharge point, receiving stream and stream classifications:

| Outfall | Receiving Stream | Latitude | Longitude | Stream Classification | Biological Stream Characterization |
|---------|------------------------------|-------------------|------------------|-----------------------|------------------------------------|
| 001 | Saline Branch Drainage Ditch | 40° 07' 11" North | 88° 11' 29" West | General Use | B |
| 002 | Saline Branch Drainage Ditch | 40° 07' 11" North | 88° 11' 46" West | General Use | B |
| 003 | Saline Branch Drainage Ditch | 40° 07' 11" North | 88° 11' 27" West | General Use | B |

To assist you further in identifying the location of the discharge(s) please see the attached map.

Discharge Number and Name: 001 STP Outfall

Load limits computed based on a design average flow (DAF) of 17.3 MGD (design maximum flow (DMF) of 34.6 MGD).

The effluent of the above discharge(s) shall be monitored and limited at all times as follows:

| Parameter | LOAD LIMITS lbs/day* | | | CONCENTRATION LIMITS mg/L | | | Regulation |
|-------------------|--|----------------|------------------|---------------------------|----------------|---------------|----------------------------------|
| | Monthly Average | Weekly Average | Daily Maximum | Monthly Average | Weekly Average | Daily Maximum | |
| CBOD ₅ | 1,443 (2,886) | | 2,886 (5,771) | 10 | | 20 | 35 IAC 304.120 40 CFR 133.102 |
| Suspended Solids | 1,731 (3,463) | | 3,463 (6,926) | 12 | | 24 | 35 IAC 304.120 40 CFR 133.102 |
| pH | Shall be in the range of 6 to 9 Standard Units | | | | | | 35 IAC 304.125 |
| Chlorine Residual | | | | | | 0.05 | 35 IAC 302.208 |
| Ammonia Nitrogen: | | | | | | | |
| March | 303 (606) | 765 (1,529) | 1,385 (2,770) | 2.1 | 5.3 | 9.6 | 35 IAC 355 and |
| April-October | 216 (433) | | 433 (866) | 1.5 | | 3.0 | 35 IAC 302 |
| Nov.-Feb. | 346 (693) | | 693 (1,385) | 2.4 | | 4.8 | |

*Load Limits are calculated by using the formula: $8.34 \times (\text{Design Average and/or Maximum Flow in MGD}) \times (\text{Applicable Concentration in mg/L})$.

FACT SHEET

NPDES Permit No. IL0031500
Notice No. RJH:03040301.dlk

National Pollutant Discharge Elimination System (NPDES)
Permit Program

PUBLIC NOTICE/FACT SHEET
of

Draft Modified NPDES Permit to Discharge into Waters of the State

Name and Address of Discharger:

Urbana Champaign Sanitary District
Post Office Box 669
Urbana, Illinois 61803

Name and Address of Facility:

Urbana Champaign SD NE STP
1100 East University Avenue
Urbana, Illinois
(Champaign County)

The following water quality and effluent standards and limitations were applied to the discharge:

Title 35: Environmental Protection, Subtitle C: Water Pollution, Chapter I: Pollution Control Board and the Clean Water Act were applied in determining the applicable standards, limitations and conditions contained in the draft Permit.

The applicant is engaged in treating domestic and industrial wastewater for the City of Champaign, the City of Urbana and tributary areas of Champaign County.

The length of the Permit is approximately 5 years.

The main discharge number is 001. The seven day once in ten year low flow (7Q10) of the receiving stream, Saline Branch Drainage Ditch, is 0 cfs.

The stream segment, BPJC-06, receiving the discharge from outfalls 001, 002 and 003 is on the 303 (d) list of impaired waters.

The following parameters have been identified as the pollutants causing impairment.

Potential Pollutants

Nutrients, phosphorus, nitrates, pathogens, organic enrichment

Potential Contributors

Municipal point sources, urban runoff/storm sewers, hydrologic/habitat modification, channelization, habitat modification, streambank modification/destabilization

The design average flow (DAF) for the facility is 17.3 million gallons per day (MGD) and the design maximum flow (DMF) for the facility is 34.6 MGD. Treatment consists of primary treatment, trickling filters, activated sludge, secondary clarification, nitrification, sand filtration, sludge thickening, anaerobic digestion, sludge dewatering, land application of sludge.

This treatment works has an approved pretreatment program. There are 3 noncategorical SIUs and 2 CIUs.

This Modified NPDES Permit does not increase the facility's DAF, DMF, concentration limits, and/or load limits.

The IEPA will accept comments on the following draft modifications to the Permit:

1. Ammonia Nitrogen limits were modified to reflect the current water quality standards.
2. Special Condition 16 has been removed.

Public Notice - Urbana Champaign Sanitary District Northeast STP, Draft Modifi... Page 2 of 2

copied at the IEPA between 9:30 a.m. and 3:30 p.m. Monday through Friday when scheduled by the interested person.

If written comments or requests indicates a significant degree of public interest in the draft modified Permit, the permitting authority may, at its discretion, hold a public hearing. Public notice will be given 45 days before any public hearing. Response to comments will be provided when the final Permit is issued.

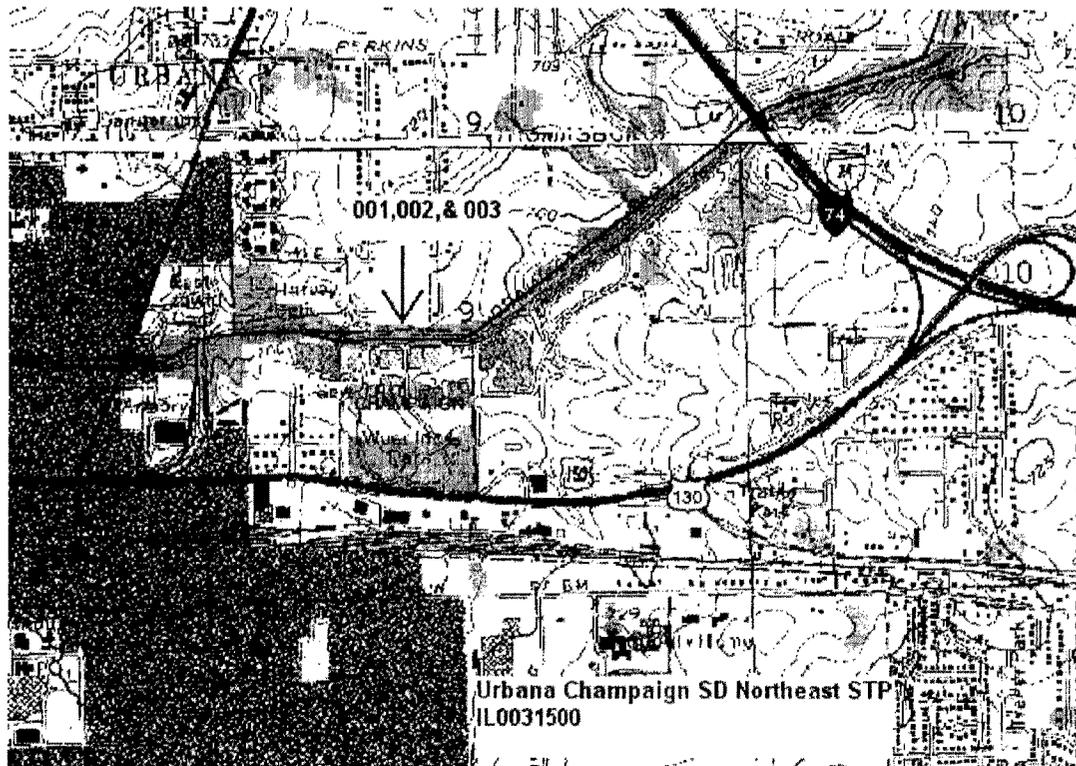
For further information, please call Ralph Hahn at 217-782-0610.

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Public Notice/Fact Sheet -- Page 4 -- NPDES Permit No. IL0031500

This draft Permit also contains the following requirements as special conditions:

1. Reopening of this Permit to include different final effluent limitations.
2. Operation of the facility by or under the supervision of a certified operator.
3. Submission of the operational data in a specified form and at a required frequency at any time during the effective term of this Permit.
4. More frequent monitoring requirement without Public Notice in the event of operational, maintenance or other problems resulting in possible effluent deterioration.
5. Prohibition against causing or contributing to violations of water quality standards.
6. Effluent sampling point location.
7. Controlling the sources of infiltration and inflow into the sewer system.
8. A requirement to monitor and a limit of 0.05 mg/L for residual chlorine when it is used.
9. The Permittee implements and administers an industrial pretreatment program pursuant to 40 CFR §403.
10. Burden reduction.
11. Submission of annual fiscal data.
12. A requirement for biomonitoring of the effluent.
13. Submission of semi annual reports indicating the quantities of sludge generated and disposed.
14. Recording the monitoring results on Discharge Monitoring Report Forms using one such form for each outfall each month and submitting the forms to IEPA each month.
15. Storm Water Pollution Prevention Plan (SWPPP)





URBANA & CHAMPAIGN SANITARY DISTRICT
INDUSTRIAL WASTEWATER DISCHARGE PERMIT
Permit Number 2004-01

SECTION ONE - GENERAL

Name: Guardian West
SIC Code: 3714 NAICS Code: 336370
Facility Address: 1306 E. University Avenue, Urbana 61802

The above referenced User is hereby authorized to discharge wastewater to the Urbana & Champaign Sanitary District subject to said User's compliance with the terms and conditions in this permit.

Effective Date: March 1, 2004
Expiration Date: February 28, 2009

Recommended For Approval:

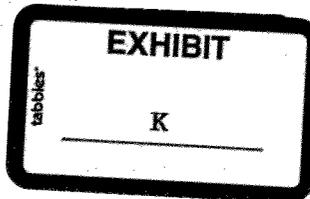
Bruce R. Butler
Bruce R. Butler, CHMM
Pretreatment Coordinator

2-24-04
(Date)

Approval:

G. Tim Bachman
G. Tim Bachman, P. E.
Director of Waste Treatment Operations

2-24-04
(Date)



SECTION FOUR - REPORTING REQUIREMENTS (CONT)

3. If sampling indicates a violation, the User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the District within 30 days after becoming aware of the violation, except the User is not required to resample if the District performs sampling at the User at a frequency of at least once per month; or, the District performs sampling at the User between the time when the User performs its initial sampling and the time when the User receives the results of this sampling. Note that additional resampling may be necessary to avoid significant noncompliance as defined in Section 825 of UCSD ordinance 600.
4. In the event the type, quality, or volume of wastewater discharged by the User is expected to materially and substantially change as reasonably determined by the User or the District, the User shall give a thirty (30) day notice in writing to the District and shall make a new application to the District prior to said change. The User shall not materially and substantially change the type, quality or volume of its wastewater beyond that allowed by this permit without prior approval of the District.

SECTION FIVE - STANDARD CONDITIONS

1. The Industrial User shall retain and preserve for no less than three (3) years, any records, books, documents, memoranda, reports, or correspondence relating to monitoring, sampling and chemical analysis made by or in behalf of the User in connection with its discharge. Such information shall include but not be limited to the date, exact place, method and time of sampling and the name of the person or persons taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques/methods used; and, the results of such analyses.
2. The Industrial User shall, after reasonable notification by the District, allow the District, the Illinois Environmental Protection Agency, and the United States Environmental Protection Agency, or their representatives, exhibiting proper credentials and identification, to enter upon the premises of the User, at all reasonable hours, for the purposes of inspection, sampling, or records inspection. any time the Industrial User is discharging wastewater to the sanitary sewer.
3. No User shall increase the use of potable or process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in this permit.

SECTION THREE - MONITORING (Cont)

6. All analyses required by this permit shall be performed either by an independent District approved laboratory or by the User's own laboratory facility and staff. If the User wishes to use their own laboratory facility and staff, the District must certify the laboratory prior to accepting any results.
7. Flow shall be monitored with continuous readout and recording capabilities and submitted on a monthly basis unless otherwise approved by the District. Flow measuring equipment shall be calibrated at least annually and records of such calibration shall be available for District inspection.
7. The Total Toxic Organics (TTO) monitoring requirements may be waived upon submittal of the appropriately signed certification statement and a solvent management plan as specified in 40 CFR Part 433.12.

SECTION FOUR - REPORTING REQUIREMENTS

1. All test results required in Section 3 of this permit shall be summarized on report forms approved by the District. The monthly sampling results shall be submitted once a month prior to the 15th day of the following month. The semi-annual results shall be submitted as soon as they become available, prior to June 30 and December 31.
2. User shall notify the District immediately upon any discharge of compatible or incompatible pollutants which causes a violation of the User's Discharge Permit or a violation of the District's Sewer Use Ordinance Number 600. In no case shall this notification exceed 24 hours from when the User became aware of the violation. The notification shall include:
 1. Name of caller
 2. Type of discharge
 3. Location and time of discharge
 4. Concentration and volume.

Formal written notification discussing circumstances and remedies shall be submitted to the District within fifteen (15) days of the incident. The written notification shall be in accordance with Section 513 of the District's Sewer Use Ordinance Number 600. The User's authorized representative shall sign the written notification. A District form is available for this notification.

SECTION TWO - DISCHARGE LIMITATIONS (CONT)

3. A discharged waste shall contain no floatable fats, oils or grease of any origin.
4. The wastewater discharger shall comply with all applicable requirements of Section 502 of the District's Sewer Use Ordinance Number 600.
5. An exception to the mercury concentration required in Section 2 above shall be allowed if all of the conditions specified in Section 307.1102 (c) of 35 ILL. Adm. Code are met. In such cases, the limit shall be 0.003 mg/l.

SECTION THREE - MONITORING

1. Samples taken as a requirement of this permit shall be representative of daily operations. Samples shall be collected, preserved and analyzed in accordance with the requirements prescribed in 40 CFR Part 136 and amendments thereto.
2. The User shall be required to operate and maintain a sampling station. The sampling station shall contain the necessary equipment to gather a 24-hour composite sample. It shall be accessible to District personnel at all times. The sampling station shall be located on the discharge line from the final pH adjustment/backwash holding tank.
3. The User shall be required to sample and analyze for cyanide (total), copper (total), nickel (total), chromium (total), zinc (total), lead (total), cadmium (total), silver (total) and total toxic organics (TTO) twice per month. The samples shall be a 24-hour composite of the wastewater discharged for all the pollutants except cyanide, which shall be a grab sample.
4. The User shall be required to monitor pH on a continuous basis. The daily maximum and daily minimum pH shall be recorded and submitted with the monthly reporting form required in Section 4.
5. The User shall be required to sample and analyze for BOD, TSS, Total FOG, Non-Polar FOG, and all the pollutants listed in Section 2.B semi-annually. The sample shall be a 24-hour composite of the wastewater discharged for all the pollutants except hexavalent chromium, cyanide, Total FOG, and Non-Polar FOG which shall be a grab sample.

SECTION TWO - DISCHARGE LIMITATIONS

1. The discharger, by nature of its industrial process, is subject to the discharge regulations of the metal finishing point source category as described in 40 CFR Part 433 Subpart A. Section 506 of the District's Sewer Use Ordinance Number 600 incorporates the National Categorical Pretreatment Standards by reference. The categorical discharge limits, if more stringent than the limitations imposed under Ordinance Number 600, supersede the ordinance limits and are enforceable by the authority of said Ordinance.
2. The wastewater discharger shall comply with the following discharge limitations. The limits are as shown except for Total FOG, non-polar FOG, and pH, which are applicable at all times.

| | Pollutant | Monthly average mg/l | Daily maximum mg/l | Minimum detection limit mg/l |
|-----|-----------------------|----------------------|--------------------|------------------------------|
| 1. | Total Arsenic | 0.1 | 0.2 | 0.05 |
| 2. | Total Cadmium | 0.04 | 0.08 | 0.005 |
| 3. | Chromium (Hex) (grab) | 0.3 | 0.6 | 0.01 |
| 4. | Total Chromium | 1.71 | 2.77 | 0.01 |
| 5. | Total Copper | 1.5 | 3.0 | 0.01 |
| 6. | Total Cyanide (grab) | 0.65 | 1.20 | 0.01 |
| 7. | Total Lead | 0.43 | 0.69 | 0.05 |
| 8. | Total Mercury | 0.0005 | 0.001 | 0.0002 |
| 9. | Total Nickel | 2.38 | 3.98 | 0.02 |
| 10. | Total Selenium | 0.04 | 0.08 | 0.02 |
| 11. | Total Silver | 0.1 | 0.2 | 0.01 |
| 12. | Total Zinc | 1.48 | 2.61 | 0.05 |
| 13. | Total Toxic Organics | N.A. | 2.13 | |
| 14. | BOD ₅ | 400 | 800 | |
| 15. | TSS | 500 | 1000 | |
| 16. | Total FOG (grab) | 100 | | |
| 17. | Non-Polar FOG (grab) | 50 | | |
| 18. | pH range (grab) | 6.0 - 10.0 | | |

No 24-hour composite sample shall exceed the daily maximum. The average of all the 24-hour composite samples in a month shall not exceed the monthly average. Excluding Hex Chrome, Total Cyanide, pH, Total and Non-polar FOG, no grab sample shall exceed five (5) times the monthly average.

SECTION FIVE - STANDARD CONDITIONS (CONT)

4. The permit issued to the Industrial User by the District may be revoked when, after inspection, monitoring or analysis it is determined that the discharge of wastewater to the sanitary sewer is in violation of Federal, State, or local laws, ordinances, or regulations. Additionally, falsification or intentional misrepresentation of data or statements pertaining to the permit application or any other required reporting form, shall be cause for permit revocation.
5. Except for information determined to be confidential under Section 736 of the District's Sewer Use Ordinance Number 600, this permit and all information pertaining to this permit shall be available for public inspection at the District's office.
6. Waste generated by the User that is not discharged to the District's sewers shall be disposed in accordance with Section 405 of the Clean Water Act, Subtitles C and D of the Resource Conservation and Recovery Act, or any other applicable local, state and federal laws.
7. Wastewater discharge permits are issued to a specific user for a specific operation and are not assigned to another use or transferable to any location without the prior written approval of the District. Sale of a User shall obligate the purchaser to seek prior written approval of the District for continued discharge to the sewer system.
8. The District shall notify a User One Hundred and Eighty (180) days prior to the expiration date of the User's permit. Within Ninety (90) days of the notification, the User shall reapply for reissuance of the permit on a form provided by the District.
9. The permit issued to the Industrial User may be subject to modification during the term of the permit, as limitations or requirements in the District's ordinance are changed. The User shall be notified of any changes in the permit thirty (30) days prior to the effective date of the change.
10. The Urbana & Champaign Sanitary District Sewer Use Ordinance Number 600 is the legal authority for this permit and the District's pretreatment program.
11. Any User who fails to comply with an order of the Board of Trustees or who has failed to comply with any provision of the District's Sewer User Ordinance Number 600 and the orders, rules, and regulations and permits issued thereunder, shall be subject to the penalties and costs set forth in Article XI of Ordinance Number 600.

9432.1995(01)

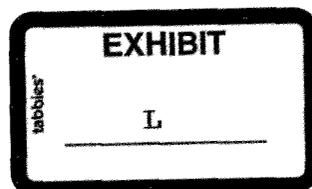
Hotline Questions and Answers

February 1995

1. Status of WWTUs/ENUs at Generator Sites

A generator may treat hazardous waste without a permit or interim status in an on-site accumulation unit that is in compliance with the regulations in 262.34 (March 24, 1986; 51 FR 10146, 10168). If a generator chooses to treat hazardous waste in an on-site wastewater treatment unit or in an on-site elementary neutralization unit, must the generator comply with 262.34?

No. A generator treating hazardous waste in an on-site wastewater treatment unit or in an on-site elementary neutralization unit, need not comply with 262.34, which is a conditional exemption from permitting requirements, because these units are already exempt from certain RCRA requirements. Specifically, wastewater treatment units and elementary neutralization units, as defined in 260.10, are exempt from RCRA treatment, storage, and disposal facility (TSDF) standards as well as from permitting standards (264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v)).



RO 13727

CALL CENTER QUESTIONS & ANSWERS

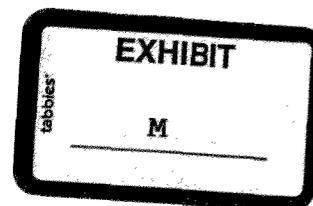
RCRA

1. Requirements for Characteristic Sludge Removed from a Wastewater Treatment Unit

A facility manages characteristic wastewater in an on-site wastewater treatment unit (WWTU) regulated by the Clean Water Act (CWA). The WWTU is exempt from the RCRA requirements for permitted and interim status treatment, storage, and disposal facilities in 40 CFR Parts 264 and 265 and the permitting requirements in §270.1(c)(2)(v). During treatment, the facility generates wastewater effluent and characteristic nonwastewater sludge. The wastewater effluent is discharged to a publicly owned treatment works (POTW) through a public sewer, while the sludge is removed, collected, and stored before land disposal. How is the characteristic nonwastewater sludge regulated? Will land disposal restrictions (LDR) requirements apply to the sludge?

Treatment sludge generated from the management of characteristic wastewaters in a WWTU must be managed as hazardous once removed from the tank if it exhibits a characteristic of hazardous waste (66 FR 27266, 27272; May 16, 2001). Therefore, the sludge will be subject to full Subtitle C regulation, including all applicable hazardous waste management standards such as on-site storage standards and off-site transportation requirements. In addition, hazardous sludges removed from CWA treatment trains and subsequently land disposed are subject to the LDR requirements (55 FR 22520, 22657; June 1, 1990).

If the nonwastewater sludge does not exhibit a characteristic of hazardous waste when it is removed from the tank, then it is no longer subject to the requirements of Subtitle C, but LDR requirements may still apply (§261.3(d)(1)). Sludge generated during the treatment of a wastewater that results in a change from wastewater to nonwastewater is considered a change in treatability group. A change in treatability group for a characteristic treatment residual is a new point of generation for LDR purposes (64 FR 25408, 25411; May 11, 1999). If the sludge has undergone a change in treatability group and is no longer characteristic, then it is not a RCRA hazardous waste, and the generator would not need to comply with the LDR requirements in Part 268.





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Title:

REQUIREMENTS FOR CHARACTERISTIC SLUDGE REMOVED FROM A WASTEWATER TREATMENT UNIT

RCRA Online Number:

14718

Date:

06/01/2004

To:

NA

From:

NA

Organization of Recipient:

NA

Description:

A treatment sludge from characteristic wastewaters in a WWTU must be managed as hazardous once it is removed from tank if it exhibits a characteristic. Such waste is subject to on-site storage, transportation, and LDR requirements. If a nonwastewater sludge does not exhibit a characteristic it is not subject to Subtitle C, but LDR may still apply. Treatment of a wastewater that results in a change to nonwastewater may be a change in treatability group and a new point of generation. If there has been a change in treatability group and the waste is no longer characteristic, LDR requirements do not apply.

Regulatory Citation(s):

264.1(g)(6), 265.1(c)(10), 270.1(c)(2)(v) [EXIT this line >](#)

Statutory Citation(s):

NA Read US Code 42, Chapter 82 [EXIT this line >](#)

Topic(s):

Characteristic Wastes; Land Disposal Restrictions; Permits and Permitting

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