

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 COMPLAINT

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

ALLEGATIONS COMMON TO ALL COUNTS

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

COUNT I  
OPERATION WITHOUT A RCRA PERMIT OR INTERIM STATUS

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

7. The spillage on the floor is hazardous waste as defined in 35 Ill. Adm. Code 721.
8. The spillage on the floor is a complex mixture that includes chromic acid, nickel sulfate from the nickel plating tanks, sulfuric acid, various proprietary high-sulfur additives used in one of the nickel plating tanks to form a high-sulfur, corrosion resistant nickel layer, and various proprietary cleaning agents containing sulfur.
9. The spillage on the floor includes contaminated debris and sludge beds.
10. The Illinois Environmental Protection Agency has not issued a RCRA permit for the facility.
11. Respondent is operating a hazardous 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).
12. Because of the age of the waste under the catwalk, chemical or biological reactions have converted part of the sulfate waste to the sulfide form, allowing the formation of hydrogen sulfide gas on contact with acid.
13. 35 Ill. Adm Code 103.400 et seq. Include procedures under which the Board would supervise the issuance of a RCRA permit.

WHEREFORE Complainant prays:

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

COUNT II  
FAILURE TO MAKE HAZARDOUS WASTE DETERMINATION

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

14. Respondent is a generator of "solid waste" as defined in 35 Ill. Adm. Code 721.102, including the material accumulated on the floor under the plating line.
15. 35 Ill. Adm. Code 722.111 provides that: "A person who generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, shall determine if that waste is a hazardous waste..."
16. Respondent failed to determine whether the material accumulated on the floor under the plating line was a "hazardous waste".
17. Respondent has violated Section 722.111.

WHEREFORE Complainant prays:

7. That the Board set this matter for hearing.
8. That the Board determine that respondent has violated 35 Ill. Adm. Code 722.111.
9. That the Board order Respondent to make the hazardous waste determination pursuant to Section 722.111.
10. That the Board assess a civil penalty of \$25,000 per day for the violation.
11. For such other relief as the Board may determine to be necessary.

COUNT III  
HAZARDOUS WASTE MINIMIZATION PROGRAM

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

18. Respondent is a large quantity generator of hazardous waste.
19. During the period from July 1 through September 30, 2004, Respondent initiated shipments of hazardous waste containing chromic acid and sludges resulting from the treatment of chromic acid pursuant to uniform hazardous waste manifests.
20. The manifests included the following certification:

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of the 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...

21. 35 Ill. Adm. Code 722.133(a)(1) provides that "the generator shall sign the manifest certification by hand; ..."
22. Respondent did not have a program in place to reduce the volume and toxicity of hazardous waste containing chromic acid and sludges resulting from the treatment of chromic acid.
23. Respondent has violated Section 722.133(a)(1).

WHEREFORE Complainant prays:

12. That the Board set this matter for hearing.
13. That the Board determine that respondent has violated 35 Ill. Adm. Code 722.133(a)(1).
14. That the Board order respondent to cease and desist from initiating shipments of hazardous waste containing chromic acid and sludges resulting from the treatment of chromic acid until it has in place a program to reduce the volume and toxicity of the waste generated
15. That the Board assess a civil penalty of \$25,000 per day for the violation.
16. For such other relief as the Board may determine to be necessary.

COUNT IV  
HAZARDOUS WASTE MINIMIZATION

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

24. Respondent is a large quantity generator of hazardous waste.
25. During the period from July 1 through September 30, 2004, Respondent initiated shipments of hazardous waste containing chromic acid and sludges resulting from the treatment of chromic acid pursuant to uniform hazardous waste manifests.

26. The manifests included the following certification:  
  
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of the 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...
27. 35 Ill. Adm. Code 722.133(a)(1) provides that "the generator shall sign the manifest certification by hand; ..."
28. During July and August, 2004, Respondent failed to implement an economically practicable program to reduce the volume and toxicity of the hazardous waste containing chromic acid and sludges resulting from the treatment of chromic acid
29. Respondent has violated Section 722.133(a)(1).

WHEREFORE Complainant prays:

17. That the Board set this matter for hearing.
18. That the Board determine that respondent has violated 35 Ill. Adm. Code 722.133(a)(1).
19. That the Board order respondent to cease and desist from initiating shipments of hazardous waste containing chromic acid and sludges resulting from the treatment of chromic acid until it has in place a program to reduce the volume and toxicity of the waste generated
20. That the Board assess a civil penalty of \$25,000 per day for the violation.
21. For such other relief as the Board may determine to be necessary.

COUNT V  
PREPARATION OF FALSE CONTINGENCY PLANS

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

30. In May, 2001, respondent filed a contingency plan with the Agency and the Champaign County Emergency Services and Disaster Agency (ESDA).
31. Respondent has since filed amended contingency plans with the Agency and ESDA.

32. The contingency plan and amendments stated that the plan was intended to meet the requirements of 35 Ill. Adm. Code 724 and 725.
33. 35 Ill. Adm. Code 725.152(a) provides:  
  
The contingency plan must describe the actions facility personnel must take to comply with Sections 725.151 and 725.156 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.
34. The contingency plan and amendments did not describe the actions respondent intended to take.
35. Respondent has violated Section 725.152(a).

WHEREFORE Complainant prays:

22. That the Board set this matter for hearing.
23. That the Board determine that respondent has violated 35 Ill. Adm. Code 725.152(a).
24. That the Board order Respondent to prepare an amended contingency plan reflecting the actions it intends to take, specifically delineating the areas of the plant and types of releases to which the plan applies.
25. That the Board assess a civil penalty of \$25,000 per day for the violation.
26. For such other relief as the Board may determine to be necessary.

COUNT VI  
OPERATION WITHOUT AN AIR POLLUTION PERMIT

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

36. On or about August 5, 2004, Respondent caused or allowed the release of hydrogen sulfide through the plating tank ventilation system to the atmosphere.
37. Section 9(b) of the Act provides that:  
  
[No person shall...] Construct, install or operate any equipment, facility, vehicle, vessel or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

38. Respondent did not have an air pollution permit allowing the emission of hydrogen sulfide.
39. Respondent has violated Section 9(b) of the Act.

WHEREFORE Complainant prays:

27. That the Board set this matter for hearing.
28. That the Board determine that respondent has violated Section 9(b) of the Environmental Protection Act.
29. That the Board order Respondent to apply for an air pollution permit governing the emission of hydrogen sulfide.
30. That the Board assess a civil penalty of \$25,000 per day for the violation.
31. For such other relief as the Board may determine to be necessary.

COUNT VII  
PROCESS EMISSION WITHOUT AN AIR POLLUTION PERMIT

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

40. On or about August 5, 2004, Respondent caused or allowed the release of hydrogen sulfide through the plating tank ventilation system to the atmosphere.
41. The release of hydrogen sulfide was a process emission.
42. Section 9(b) of the Act provides that:  
  
[No person shall...] Construct, install or operate any equipment, facility, vehicle, vessel or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.
43. Respondent did not have an air pollution permit allowing the emission of hydrogen sulfide.
44. Respondent has violated Section 9(b) of the Act.

WHEREFORE Complainant prays:

32. That the Board set this matter for hearing.
33. That the Board determine that respondent has violated Section 9(b) of the Environmental Protection Act.
34. That the Board order Respondent to apply for an air pollution permit governing the emission of hydrogen sulfide.
35. That the Board assess a civil penalty of \$25,000 per day for the violation.
36. For such other relief as the Board may determine to be necessary.

/s/ Morton F. Dorothy \_\_\_\_\_  
Morton F. Dorothy, Complainant

Morton F. Dorothy  
104 West University  
Urbana IL 61801  
217/384-1010

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that, on the 19th day of September, 2006, I served the listed documents, by electronic mail, upon the listed persons:

**AMENDED COMPLAINT**

Thomas G. Saffley  
Hodge Dwyer Zeman  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, IL 62705-5776  
tsaffley@hdzlaw.com

Carol Webb  
Hearing Officer, IPCB  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, IL 62794-9274  
webbc@ipcb.state.il.us

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

/s/ Morton F. Dorothy \_\_\_\_\_  
Morton F. Dorothy, Complainant

Morton F. Dorothy  
104 W. University  
Southwest Suite  
Urbana IL 61801  
217/384-1010  
mdor4248@aol.com