

ILLINOIS POLLUTION CONTROL BOARD
February 15, 2007

MORTON F. DOROTHY,)
)
 Complainant,)
)
 v.) PCB 05-49
) (Citizens Enforcement – Air, Land)
 FLEX-N-GATE CORPORATION, an Illinois)
 corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by N. J. Melas):

On September 8, 2004, complainant, Mr. Morton F. Dorothy filed a six-count citizens enforcement complaint against respondent, Flex-N-Gate Corporation (FNG). The complaint concerns FNG's facility, known as Guardian West, located at 601 Guardian Drive, Urbana, Champaign County where FNG produces bumpers for vehicles. According to the complaint, as a result of an alleged spill of sulfuric acid inside the facility on August 5, 2004, FNG violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and the Board's hazardous waste rules. The Board's hazardous waste rules are identical in substance to the federal rules implementing the Resource Conservation and Recovery Act of 1976 (RCRA).

Currently, only count I of Mr. Dorothy's original complaint remains. Count I alleges that FNG operates a hazardous waste treatment and storage facility without a RCRA permit or interim status. Specifically, count I alleges violations of Section 21(f) of the Act and Section 703.121(a) of the Board's hazardous regulations. 415 ILCS 5/21(f) (2004); 35 Ill. Adm. Code 703.121(a). For the reasons set forth below, the Board grants FNG's renewed motion for summary judgment, closes the docket, and dismisses this case.

In this order, the Board first sets forth the procedural background. The Board then sets forth the applicable statutes and Board regulations, FNG's motion for summary judgment, and Mr. Dorothy's response. Finally, the Board analyzes the parties' arguments and provides reasoning for granting FNG's motion for summary judgment.

PROCEDURAL BACKGROUND

On September 8, 2004, Mr. Dorothy filed a six-count enforcement complaint against FNG. FNG moved to dismiss the entire complaint on October 12, 2004. On February 3, 2005, the Board denied FNG's motion to dismiss and accepted the complaint for hearing.

On October 20, 2005, the Board granted summary judgment in favor of FNG as to counts II through VI of the complaint and denied both parties' motions for summary judgment on count I. On November 14, 2005, Mr. Dorothy moved the Board to reconsider that order. Upon

reconsideration, the Board, on March 2, 2006, upheld the October 20, 2005 order granting summary judgment in favor of FNG on counts II through VI, leaving count I as the only remaining count of Mr. Dorothy's original complaint.

On June 19, 2006, FNG moved the Board to sanction Mr. Dorothy by dismissing the remaining count I of the complaint or, alternatively, grant summary judgment in its favor on that count. On September 19, 2006, Mr. Dorothy filed an amended complaint alleging six new counts, for a total of seven counts.

On November 2, 2006, the Board granted FNG's motion for sanctions. As a sanction, the Board struck Mr. Dorothy's amended complaint and barred Mr. Dorothy from alleging any new counts or making any new allegations unrelated to count I of his original complaint. The Board allowed Mr. Dorothy until December 4, 2006 to request leave to amend the remaining count I. On December 26, 2006, FNG renewed its June 19, 2006 motion for summary judgment on count I. To date, Mr. Dorothy has not requested leave to amend his complaint or responded to the motion for summary judgment.

FINDINGS OF FACT

FNG owns and operates a vehicle bumper manufacturing facility located at 601 Guardian Drive in Urbana, Illinois (Guardian West facility). Comp. at 3-4. The manufacturing process includes a nickel and chromium electroplating line in which steel bumpers are cleaned, electroplated with several layers of nickel, electroplated with chromium, and rinsed. Comp. at 4. The cleaning, plating and rinsing operations take place in open-top tanks holding up to 10,000 gallons of various chemicals in water solution. Comp. at 5. The tanks are arranged in two rows with a catwalk between the rows to access the tanks from above. Mot. at 18; Exh. G.

Mr. Anthony Rice is employed as Plating Manager at the FNG facility. According to Mr. Rice, the electroplating line consists of a series of tanks mounted on concrete piers above a sloped, concrete floor. Mot., Exh. F. During the plating process, bumpers are dipped into a tank, raised, moved above the next tank, dipped, and the process continues. *Id.* Some of the liquid from each respective tank remains on the bumper when that bumper is lifted. Some of the solution may fall from the bumpers and land on the plating room floor below. *Id.* at 2. According to Mr. Rice, the process is intentional. *Id.* at 2. The floor of the plating room is coated with epoxy and is sloped towards the center of the room. Two concrete pits in the center of the floor collect the fallen solution. *Id.* at 2. During each shift, at least part of the floor is hosed down to wash any material on the floor into the pits. Pumps located at each pit transfer solution into piping that leads to equipment in which wastewater from the facility is treated. The maximum amount of time that material from the floors would remain in the pit is a few hours. *Id.* at 2.

The equipment FNG uses to treat wastewater at the Guardian West facility includes an equalization tank that collects wastewater, outside equalization tanks 1 and 2 that serve as equalization and surge storage, and chrome reduction and pH adjustment tanks that adjust pH and prepare the solution for hydroxide precipitation and to begin the process of coagulation. Next, in the flocculation tank, large charged particles are added to coagulate smaller particles so

that solids will settle out in the lamella where liquids flow to the sand filters and solids are pumped to the sludge holding tank. Sand filters serve as the final step for any lighter solids that may not settle out in the lamella. The final pH adjustment tank adds acid or caustic to the liquids to meet permit requirements for discharge into the POTW. From the lamella, solids, on the other hand, enter the sludge holding tank, then filter presses that dewater sludge, and then to a sludge dryer that was removed in March 2005. Mot. at 20-21; citing Exh. G at 4. Following dewatering, sludge is placed into a satellite accumulation container before placement into 90-day accumulation containers before being shipped off-site. Mot. Exh. G at 2.

Mr. Kevin Jeffries is employed as Environmental Director for Flex-N-Gate Corporation. Mot. Exh. G at 1. According to Mr. Jeffries, liquids from the facility's wastewater treatment system are discharged to a publicly owned treatment works (POTW) operated by the cities of Champaign and Urbana, Illinois. *Id.*; Dodson Aff. at 2.

According to Mr. Jeffries, the sludge that the facility's wastewater treatment system generates is a hazardous waste as defined in Section 721.103. Mot. Exh. G at 3; 35 Ill. Adm. Code 721.103. The Guardian West facility produces ten other streams of RCRA hazardous waste. Ans. to Comp. Interrogs., No. 3.

On August 5, 2004, the pipe from a bulk storage tank of sulfuric acid to Tank No. 8 separated at the fitting located above the valve in the vertical portion of the pipe that is outside the tank. Rice Aff. at 3-4. FNG claims that the separation occurred due to having used the wrong adhesive to join the pipe to the fitting. *Id.* The separation allowed a small quantity of sulfuric acid to be released to the plating room floor. *Id.*

At one time a "day tank," as identified by Mr. Dorothy in the complaint, was located in the plating room. FNG stopped using the day tank as described, however, and replumbed the system in December 2001, more than two and a half years before the separation occurred on August 5, 2004. Rice Aff. at 4. According to FNG, on August 5, 2004, the day tank did not contain any substance of any kind, and the separation of the pipe did not "empt[y] the day tank." Rice Aff. at 5. Further, Mr. Denny Corbett, the Corporate Safety Director for Flex-N-Gate Corporation, states that no fire or explosion occurred at the facility on August 5, 2004.

Ms. Jackie Christiansen is the environmental manager at the Guardian West facility. Christiansen Aff. at 1. Ms. Christiansen states that FNG has an Emergency Response and Contingency Plan for the facility, portions of which serve as both the facility's contingency plan under Subpart D to 35 Ill. Adm. Code Part 725 and the facility's emergency response plan under the Occupational Safety and Health Act (29 C.F.R. §1910.120(p)(8)(i)). Christiansen Aff. at 1-2. Ms. Christiansen states that the plan does not focus on hazardous waste, but "hazardous material spills," and addresses any type of hazardous substance at the facility. Christiansen Aff. at 2.

APPLICABLE BOARD PROCEDURAL RULES

Section 101.500(d) of the Board's rules for the filing of motions and responses provides, in part:

Within 14 days after service of a motion, a party may file a response to [a] motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. 35 Ill. Adm. Code 101.500(d).

Section 21(f) of the Act states in pertinent part:

No person shall:

- (f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
 - (1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or
 - (2) in violation of any regulations or standards adopted by the Board under this Act. 415 ILCS 5/21(f) (2004).

* * *

Section 703.121(a) of the Board's rules regarding RCRA permits states:

- a) No person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation as follows:
 - 1) Without a RCRA permit for the HWM (hazardous waste management) facility; or
 - 2) In violation of any condition imposed by a RCRA permit.

Section 703.123 of the Board's RCRA permitting regulations provides specific exclusions from the program:

The following persons are among those that are not required to obtain a RCRA permit:

* * *

- e) An owner or operator of an elementary neutralization unit or wastewater treatment unit, as defined in 35 Ill. Adm. Code 720.110. 35 Ill. Adm. Code 703.123.

Section 720.110 of the Board's hazardous waste 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;

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 that is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or treats or stores a wastewater treatment sludge that 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. Adm. Code 720.110.

Section 720.110 of the Board's hazardous waste regulations also defines "ancillary equipment," "tank," and "tank system" as follows:

"Ancillary equipment" means 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.

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

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system. 35 Ill. Adm. Code 720.110.

Section 721.103 of the Board's hazardous waste rules defines hazardous waste as follows:

- a) 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. Adm. Code 721.103(a).

BOARD DISCUSSION

Summary Judgment Standard

Summary 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. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). 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.* 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). “Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis which would arguably entitle [it] to a judgment.” Sutter Sanitation, Inc. et al. v. IEPA, PCB 04-187 slip op. at 9 (Sept. 16, 2004); citing Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

In this case, FNG has asked the Board to grant summary judgment in its favor on count I of the complaint. Upon reviewing the pleadings and the record in this matter, the Board agrees that there are no issues of material fact and judgment may be granted as a matter of law.

FNG's Motion for Summary Judgment on Count I

In ruling on FNG's motion for summary judgment, the Board must decide whether FNG has adequately shown that its management of hazardous waste alleged in count I is exempt from RCRA permitting and interim status. Below the Board discusses count I as set forth by Mr. Dorothy in the original complaint and FNG's motion for summary judgment on that count. Again, Mr. Dorothy did not respond to Flex-N-Gate's motion for summary judgment. Next, the Board analyzes FNG's arguments and provides reasoning for granting summary judgment in favor of FNG on count I.

Count I of Mr. Dorothy's Complaint

In count I of the complaint, Mr. Dorothy asserts that FNG is managing hazardous waste at the Guardian West facility without a RCRA permit and without interim status in violation of the Act and Board regulations. Comp. at 4; citing 415 ILCS 5/21(f) (2004); 35 Ill. Adm. Code 703.121 (a). Mr. Dorothy further states that “[b]ecause of the age of the waste under the catwalk, chemical or biological reactions may have converted part of the sulfate waste to the sulfide form, allowing the formation of hydrogen sulfide gas on contact with acid.” *Id.* When

using the phrase “under the catwalk,” Mr. Dorothy is referring to an area of the plating room floor. Comp. at 1, par. 5-6. Mr. Dorothy states that spilled chemicals on the plating room floor are a hazardous waste as defined in 35 Ill. Ad. Code 721. Comp. at 1, par. 7.

FNG’s Arguments

FNG concedes that it manages hazardous waste at the Guardian West facility. As an affirmative defense to Mr. Dorothy’s allegations, however, FNG argues that the plating room floor is exempt from RCRA permitting because FNG manages hazardous waste on the floor under the WWTU exemption. Mot. at 24. FNG argues that it qualifies for the exemption because: (1) the floor of the plating room is part of a WWTU; (2) there are no “storage time requirements” that apply to materials contained in a WWTU; (3) therefore, FNG did not violate and could not have violated, any “storage time requirements for hazardous waste under the catwalk;” and (4) FNG’s management of waste in its WWTU is otherwise proper and does not require a RCRA permit. Each of FNG’s arguments is discussed in more detail below.

FNG’s Wastewater Treatment System Meets the Definition of “Wastewater Treatment Unit.” FNG first argues that the treatment system at the Guardian West facility meets the definition of a “wastewater treatment unit” as defined in Section 720.110 of the Board’s regulations. Mot. at 25. FNG contends that under Section 720.110, FNG’s equipment qualifies as a “wastewater treatment unit” under RCRA if it satisfies the following three elements: (1) the equipment 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; (2) the equipment 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 (3) the equipment meets the definition of “tank” or “tank system.” Mot. at 26; citing 35 Ill. Adm. Code 720.110.

FNG further explains how the wastewater treatment system at Guardian West meets each of the elements of Section 720.110. Mot. at 26; citing 35 Ill. Adm. Code 720.110. The Guardian West system meets the first element, argues FNG, because it is “part of a wastewater treatment facility.” Mot. at 26. Under Section 720.110, 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. Adm. Code 720.110. FNG explains that all of the equipment used by FNG to generate, accumulate, and store the wastewater treatment sludge is located on-site and, therefore, part of the “facility.” *Id.*

Further, states FNG, the facility has “authorization to discharge pursuant to 35 Ill. Adm. Code 310.” Mot. at 26. Section 310 allows POTWs to authorize discharges from industrial users. 35 Ill. Adm. Code 310.103(b). FNG contends that the Urbana Champaign Sanitary District has authorized the Guardian West discharge (Jeffries Aff., par. 8), and Mr. Dorothy acknowledges that authorization in his complaint. Mot. at 27; citing Comp. at 2. FNG attached the Urbana Champaign Sanitary District’s authorization as Exhibit K. Mot. at 27, Exh. K; Jeffries Aff. at par. 13.

FNG next contends that the Guardian West wastewater treatment system satisfies the second requirement of the definition of “wastewater treatment unit,” because the equipment “generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103.” Mot. at 28; citing 35 Ill. Adm. Code 720.110. The Guardian West wastewater treatment process produces and accumulates wastewater treatment sludge that is hazardous pursuant to 35 Ill. Adm. Code 721.103. Jeffries Aff. at par. 4, 9, 14; *see also* Comp. at 2.

As required under the definition of hazardous waste, contends FNG, the facility’s wastewater treatment sludge is not excluded from regulations under Section 721.104(b), but rather is specifically listed in Subpart D of Part 721. Mot. at 28; citing 35 Ill. Adm. Code 721.103(a). Specifically, notes FNG, Section 721.131(a) describes F006 hazardous waste and six exemptions from that definition as:

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. Mot. at 29; quoting 35 Ill. Adm. Code 721.131(a).

FNG states that because the plating process at Guardian West involves electroplating steel bumpers with nickel and chromium, the facility’s wastewater treatment sludge is generated “from electroplating operations,” and the six exceptions in Section 721.131(a) do not apply.

FNG next contends that 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 par. 15. FNG also states it has neither applied to the Board for a site-specific rule nor a delisting of this waste. Therefore, states FNG, the wastewater treatment sludge meets the criteria for being defined as a hazardous waste. Mot. at 29.

FNG further argues that the Guardian West equipment meets the third element of the definition of “wastewater treatment unit” because the equipment meets the definition of “tank” or “tank system” in Section 720.110. Mot. at 29; citing 35 Ill. Adm. Code 720.110. FNG explains that the wastewater at the Guardian West facility is treated in several pieces of equipment. Jeffries Aff. at par. 4. The equipment meets the definition of “tank” as that term is defined in Section 720.110, because it is stationary, designed to contain and accumulate the wastewater treatment sludge, and constructed primarily of nonearthen materials (fiberglass reinforced plastic and steel), and the nonearthen materials provide structural support. Mot. at 31; citing Exh. G at 3; citing 35 Ill. Adm. Code 720.110 (the definition of “tank”).

According to FNG, all of the remaining equipment used to treat the wastewater at the Guardian West facility distribute, meter, or control the flow of the wastewater treatment sludge to storage or treatment tanks, or to a point of shipment for disposal offsite. Mot. at 31; citing 35 Ill. Adm. Code 720.110 (the definition of “ancillary equipment”). To illustrate this point, FNG explains that the plating room floor is coated with epoxy and sloped to direct solution that falls to the floor during the plating process to the pit in the center of the floor. Mot. at 31. The pit in the

center of the floor contains the plating room floor wastewater until it is pumped into pipes that lead to treatment equipment. *Id.* The pump contained in that pit distributes material from the pit to the pipes. Finally, 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 Urbana Champaign Sanitary District, control the flow of sludge between hazardous waste storage and treatment tanks to the point of shipment for offsite disposal. *Id.* FNG notes that the definition of “ancillary equipment” specifically references both pumps and piping. *Id.*; citing 35 Ill. Adm. Code 720.110. All of this equipment together, reasons FNG, constitutes a WWTU for purposes of RCRA. Mot. at 32.

No “Storage Time Requirements” Apply to Waste Contained in a WWTU. FNG contends that RCRA allows generators of hazardous waste to manage hazardous waste in numerous ways without triggering RCRA permitting requirements. Mot. at 32. For example, under Section 703.123(e), an owner or operator of a wastewater treatment unit is not required to obtain a RCRA permit. FNG states that Section 725.110(c), “Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities,” also lists numerous methods by which hazardous waste can be managed so that Part 725 does not apply, including management in a WWTU. Mot. at 33; citing 35 Ill. Adm. Code 725.101(c)(10); 35 Ill. Adm. Code 724.101(g).

FNG explains that some methods that generators use to manage wastes may have a time limit for accumulating hazardous wastes. Mot. at 33; citing 35 Ill. Adm. Code 722.134. FNG contends that while those time limits apply to waste placed in containers, in tanks, on drip pads, or in containment buildings (35 Ill. Adm. Code 722.134(a)(1)), the time limits do not apply to storage in a WWTU. *Id.* FNG asserts that because the plating room floor is part of a WWTU, no accumulation time limits for managing hazardous waste (provided in 35 Ill. Adm. Code 722.134) apply to the plating room floor. *Id.* FNG reiterates that WWTUs are exempt from RCRA treatment, storage, and disposal facility as well as permitting standards. Mot. at 34; quoting Mot. Exh. L.

Any Hazardous Waste Present “Under the Catwalk” Is Also Exempt. FNG claims that because no storage time requirements apply to the facility’s WWTU, FNG could not have violated any “storage time requirements” for hazardous waste present “under the catwalk” as Mr. Dorothy alleges. Mot. at 35. FNG states it 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. *Id.* Further, no accumulation time limit applies to waste contained in a WWTU. Therefore, FNG argues it is entitled to summary judgment as a matter of law based on the stated affirmative defense. *Id.*

FNG’s Management of Waste is Otherwise Proper. Lastly, FNG raises an argument in anticipation of Mr. Dorothy taking the position in his response that count I is based on some other violation involving the plating room floor. Mot. at 35-40. Because Mr. Dorothy did not respond to either the initial or renewed motion for summary judgment, the Board will not address that argument here.

Board Analysis

Because Mr. Dorothy failed to file a response, he is deemed to have waived objection to the Board granting the motion for summary judgment.

Mr. Dorothy has alleged that FNG owns or operates a facility that treats or stores hazardous waste, and that FNG required a permit to manage hazardous waste on the plating room floor of Guardian West, but did not have one. FNG, having plead the affirmative defense of operating without a RCRA permit or interim status under the WWTU exemption, bears the burden to show that its operations meet the exemption requirements. The Board finds that FNG has met that burden. FNG admits that it generates and treats hazardous waste at the Guardian West facility. *See* May 27, 2005 Motion for Summary Judgment as to All Counts of Complainant's Complaint, Exh. C, par. 15. FNG also does not dispute Mr. Dorothy's allegation that the spilled chemicals on the plating room floor constitute hazardous waste.

Nonetheless, FNG states that the hazardous waste at issue is treated by equipment that meets the definition of a WWTU and that the plating room floor falls within that definition. Therefore, contends FNG, the hazardous waste on the plating room floor at Guardian West as described by Mr. Dorothy does not trigger RCRA permitting or interim status requirements.

Wastewater treatment units are excluded from RCRA permitting under Section 703.123 of the Board's hazardous waste regulations. 35 Ill. Adm. Code 703.123. To qualify for the exclusion, WWTUs must meet all three parts of the definition of a wastewater treatment unit in Section 720.110 of the Board's rules. 35 Ill. Adm. Code 720.110. The purpose of the wastewater treatment unit exemption is to exclude tank systems that are subject to regulation under the Clean Water Act. 53 Fed. Reg. 34080 (Sept. 2, 1988). Here, FNG has shown that the Guardian West system has a discharge subject to pretreatment standards (35 Ill. Adm. Code 310). FNG has also shown that the system manages hazardous wastewater treatment sludge, and that the system meets the definition of a tank or tank system.

By definition, a tank system is a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system. Drains, troughs, trenches, and ditches connected to sumps are considered ancillary equipment to a WWTU. Ancillary equipment to a WWTU also qualifies for the WWTU exemption. USEPA Memorandum: Regulatory Status of Shell Oil's Norco, Louisiana Facility Ditch System, Feb. 1, 1994 (RCRA Online #13653). Therefore, the floors of the plating room, designed, coated, and sloped to convey spilled solution to the sumps and into the pipes leading to the wastewater treatment system, also qualify for the WWTU exemption.

For all of these reasons, the Board finds that FNG has shown by a preponderance of the evidence that although it manages hazardous waste at the Guardian West facility, the coated plating room floor at the Guardian West facility falls within the definition of a WWTU. The Board further finds that the plating room floor, as part of the WWTU, is therefore exempt from RCRA treatment, storage, and disposal requirements as well as permitting or interim status standards. Under this analysis, the Board finds that FNG did not violate any storage time

requirements for hazardous waste “under the catwalk,” as Mr. Dorothy alleges in count I of the complaint.

Mr. Dorothy has not demonstrated that the waste on the plating room floor as he describes in count I subjects the facility to RCRA permitting, falls outside of the exemptions provided by Board rules, or otherwise violates Section 21(f) of the Act or Section 703.121(a) of the Board’s rules. By failing to respond to the motion, Mr. Dorothy has presented no factual basis that would arguably entitle him to judgment.

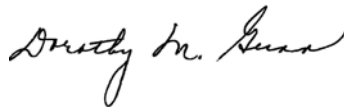
CONCLUSION

Today the Board grants FNG’s renewed motion for summary judgment, closes the docket, and dismisses this case.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 15, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board