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OCT 24 2003
STATE OF ILLINOIS
Pollution Control Board

PCB 04-75

October 23, 2003

Dorothy M. Gunn
Clerk, Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601-3218

Re: ***Mate Technologies, Inc. v. FIC America Corporation***
Enforcement - Citizen's Complaint

Dear Ms. Gunn:

Please find enclosed for filing one original and ten copies of each of the Notice of Filing, Complaint, and Certificate of Service in the above-referenced matter. All of the afore-mentioned documents are printed on recycled paper. I would greatly appreciate your returning a file-stamped copy to me in the enclosed self-addressed stamped envelope. Thank you for your assistance.

Very truly yours,

Carey S. Rosemarin

cc: Timothy J. Hammersmith, Esq.

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OCT 24 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MATE TECHNOLOGIES, INC.	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 04-75
	)	(Enforcement X)
	)	
F.I.C. AMERICA CORPORATION,	)	
	)	
Respondent.	)	
	)	

NOTICE OF FILING

To: Masuda, Funai, Eifert & Mitchell, Ltd.
Registered Agent for F.I.C. AMERICA CORPORATION
One E. Wacker Dr.
Suite 3200
Chicago , IL 60601-2002

Please take notice that on this 23rd day of October 2003, this law firm filed with the Clerk of the Illinois Pollution Control Board a Citizen's Complaint on behalf of Mate Technologies, Inc. A copy of the complaint is attached and served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code §103.204(f).

MATE TECHNOLOGIES, INC.

By: _____
Carey S. Rosemarin

Carey S. Rosemarin (Atty. No. 6181911)
Law Offices of Carey S. Rosemarin, P.C.
500 Skokie Boulevard, Suite 510
Northbrook, IL 60062
847-897-8000
312-896-5786 (fax)

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OCT 2 4 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MATE TECHNOLOGIES, INC.	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 04-75
	)	(Enforcement X)
	)	
F.I.C. AMERICA CORPORATION,	)	
	)	
Respondent.	)	

COMPLAINT

Statement of the Case

1. Mate Technologies, Inc. ("Mate") by its undersigned attorney, brings this Citizen's Complaint for injunctive relief and cost recovery under Section 31(d) of the Illinois Environmental Protection Act (the "Act"). 415 ILCS 5/31(d). Mate alleges that F.I.C. America Corporation ("FIC") has violated fundamental requirements of Illinois' used oil regulations, solid waste regulations and hazardous waste regulations. Mate also alleges that FIC has violated the statutory prohibitions on indiscriminate waste handling, air pollution and water pollution. FIC acted in total disregard of Illinois' plenary statutory and regulatory structure, which is designed to assure environmentally sound management of wastes. FIC thereby violated numerous provisions of Illinois environmental law.

Parties

2. Mate is an Illinois corporation having its principal place of business at 1695 Todd Farm

Drive, Elgin, Illinois. At all relevant times, Mate owned the property located at 750 Rohlwing Road in Itasca, Illinois, including a 52,800 square-foot building situated thereon (the "Property"). As a corporation, Mate is a "person" within the meaning of 415 ILCS 5/3.26.

3. FIC is an Illinois corporation. On information and belief, FIC has its principal place of business at 485 East Lies Road, in Carol Stream, Illinois, and is a wholly-owned subsidiary of Futaba Industrial Co., Ltd., of Okazaki, Japan. As a corporation, FIC is a "person" within the meaning of 415 ILCS 5/3.26.

Relevant Facts

4. Beginning in March 2002, FIC continuously operated the Property for the purpose of manufacturing automobile components. On information and belief, such manufacturing consisted primarily of welding and other processes, in which metal is fashioned into automobile mufflers and other parts.

5. On information and belief, the metal that FIC uses as a feedstock is coated with oil, and FIC's operations have caused vast quantities of such oil to disseminate uncontrolled on and about the Property and to be released into the environment. On information and belief, such dissemination occurs directly, as it does when the oil-coated surfaces are impacted during stamping and/or similar operations, causing oil droplets to scatter. And, on information and belief, it occurs indirectly, as it does when extreme heat is applied to the oil-coated surfaces during welding, thus causing the oil to vaporize and subsequently condense on virtually all surfaces in and out of the building. Additionally, on information and belief, FIC's operations have caused some or all of the oil to become contaminated with chromium and other metals.

6. The air within the building on the Property is circulated by the heating, ventilating and air

conditioning ("HVAC") system. The HVAC system collects air within the building, directs it through a number of filters, and emits some air to the exterior.

7. FIC has at all times failed to contain or in any way control the oil disseminated from its operations. As a direct result, the oil has been released into the environment by virtue of its escape through windows, doors and other openings in the building and via storm sewers on the Property. It has also been inhaled by persons on and about the Property. And it has settled on surfaces throughout the Property, coating them with a black film.

8. Virtually all of the oil contamination remaining on the Property results from FIC's manufacturing operations. At the commencement of FIC's operation of the Property, the interior of the building on the Property was freshly painted.

9. Mate expressed its concern about environmental conditions at and about the Property as early as June 18, 2003, and requested copies of any correspondence between FIC and any government agency pertaining to the release of hazardous substances at the Property. FIC did not respond to this request. Rather, on information and belief, FIC subsequently "pressure washed" some areas affected by the oil contamination and painted over surfaces without removing all of the contamination.

10. On at least one occasion, October 1, 2003, FIC conducted such pressure washing and disposed of the resulting rinsate in the storm sewers on the Property.

11. Mate's representatives inspected the Property on or about September 8, 2003 and collected samples of the disseminated oil on the Property. On information and belief, the samples of the oil were representative of the material generated by FIC's operations throughout the entire time it operated the Property. The samples were submitted for laboratory analysis.

12. The analytical results showed the following:

i) water in the storm sewer contained metals (including total chromium at 0.15 mg/L) and polynuclear aromatic hydrocarbons (including benzo(a)pyrene, a known carcinogen, at 0.02 mg/L);

ii) oil on an exposed wall (that had not been painted over) containing total petroleum hydrocarbons ("TPH," including 3.9 mg/wipe of oil);

iii) oil on an exposed wall (that had not been painted over) containing metals (including total chromium at up to 3,000 ug/ft^2);

iii) oil on one of the filters from the HVAC system containing total petroleum hydrocarbons (including 3.9 mg/wipe of oil);

iv) oil on one of the filters from the HVAC system containing metals (including total chromium at 21,000 mg/kg, and chromium determined by the toxic chemical leaching procedure ("TCLP") at 7.2 mg/L, respectively); and

v) oil on one of the filters from the HVAC system containing total halogens (including extractable organic halogens at 2,150 mg/kg and chloride at 4,000 mg/kg).

13. The black film is visible on surfaces throughout the building. It remains a threat to the health and the environment because even to the extent that the oil has been temporarily coated with paint, the oil will have to be removed and properly disposed in accordance with applicable regulations at a future date.

COUNT I
(Violation of 35 Ill. Adm. Code Part 739,
Used Oil Storage)

14. Mate realleges Paragraphs 1 through 13, above, as if fully set forth in this Count I.

15. Part 739,[1] containing the "Standards for the Management of Used Oil," defines "used oil" as "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." §739.100.

16. Laboratory analysis of a wipe sample of film on one of the walls shows that it had a TPH content of 3.9 mg/wipe of oil, thus demonstrating the substance comprising the film was refined from crude oil.

17. Additional laboratory analyses of wipe samples of the film on the walls also demonstrate that the oil contains physical or chemical impurities, notably metals. On information and belief, FIC used the oil on the metal feedstock to prevent corrosion. Further, on information and belief, the oil became contaminated with metals during FIC's industrial operations. Therefore, FIC's use of the oil caused it to become contaminated by physical or chemical impurities, and the oil that was disseminated in and around the Property is "used oil" within the meaning of §739.100.

18. Part 739 defines a "used oil generator" as "any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation." §739.100. FIC is a used oil generator because, on information and belief, its acts first caused the oil on the metal to come within the definition of "used oil," and thus become subject to Part 739.

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[1] For convenience, citations have been abbreviated in the text to include only numbers of regulatory parts and sections; and unless otherwise noted, citations refer to 35 Ill. Adm. Code. (E.g., "Part 739" refers to 35 Ill. Adm. Code, Part 739, and "§720.110" refers to 35 Ill. Adm. Code §720.110.)

19. Part 739 incorporates the definitions in §720.110. § 739.100. Additionally, the Act defines "waste," in pertinent part, as "discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations." 415 ILCS 5/3.53. FIC's disseminated used oil was discarded material, and thus waste within the meaning of 415 ILCS 5/3.53.

20. "Storage" is defined as "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere." §720.110. FIC's wanton dissemination of used oil into the environment and in and around the Property (and in and on the individuals thereon), constitutes "storage" under this definition.

21. Alternatively, the Act defines "storage" as "the containment of waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal." 415 ILCS 5/3.46. FIC's wanton dissemination of used oil into the environment and in and around the Property (and in and on the individuals thereon), constituted "storage" within the meaning of 415 ILCS 5/3.46.

22. Part 739 states that "used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under 35 Ill. Adm. Code 724 or 725." §739.122(a). Part 739 defines "tank" as "any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials (e.g. wood, concrete, steel, plastic) which provides structural support." §739.100. Part 739 defines "container" as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled." §739.100. The units subject to regulation under Parts 724 or 725 include items such as surface impoundments, waste piles, and incinerators; they do not include the atmosphere, sewers,

exposed surfaces, or people. None of the locations in, or on which FIC stored its used oil was a tank, container, or unit subject to regulation under Parts 724 or 725. Therefore, FIC violated §739.122(a).

Prayer for Relief: Count I

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated §739.122(a);

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all used oil from any and all areas in or on which it has been stored in violation of §739.122(a);

D. Award Complainant all costs it has incurred in investigating the effects of FIC's used oil handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to fifty thousand dollars ($50,000) for each violation of §739.122(a), and up to an additional ten thousand dollars ($10,000) for each day that the violation has continued.

F. Grant such other and further relief as this Board deems appropriate.

COUNT II

(Violation of 35 Ill. Adm. Code Part 739, Used Oil Disposal)

23. Mate realleges Paragraphs 1 through 19, above, as if fully set forth in this Count II.

24. The United States Environmental Protection Agency presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. §739.110(a). To the extent that a used oil generator disposes of used oil, that person must do so in compliance with Part 739, Subpart I. §739.120(b)(5).

25. Under Part 739, Subpart I, used oil that is hazardous must be disposed in compliance with the hazardous waste management requirements of Parts 703, 720 through 726, and 728. §739.181(a). And used oil that is not hazardous must be disposed in accordance with Parts 807 through 815 and 40 CFR Parts 257 and 258. §739.181(b). FIC utterly disregarded the requirements of Part 739, Subpart I, particularly §739.181.

Hazardous used oil

26. The hazardous waste regulations define "solid waste" as "any discarded material that is not excluded by Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131." §721.102(a)(1).

27. A material is "discarded" if it is abandoned. §721.102(a)(2). And a material is a solid waste if it is abandoned by being "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated." §721(b)(3). By its wanton emission of the used oil into the atmosphere, into the storm sewers into and on individuals, and on and about the Property, and leaving it there unattended, FIC has accumulated and stored the used oil as stated in §721(b)(3). Therefore, FIC's used oil was a "discarded material" and thus a "solid waste" within the meaning of §721.102(a)(1).

28. A solid waste, as defined in §721.102, is a "hazardous waste" if "it exhibits any of the characteristics of hazardous waste identified in Subpart C of this Part [721]." §721.103(a)(2)(A).

Further, under §721.124, which is part of Subpart C, a solid waste is a hazardous waste if it contains any of the contaminants listed in §721.124(b) in their respective threshold concentrations. §721.124(a).

29. Some or all of the used oil generated by FIC was hazardous because it exhibited the toxicity characteristic of hazardous waste. It contained 7.2 mg/L of chromium as determined by the TCLP test, thus exceeding the threshold concentration of 5.0 mg/L set forth in §721.124(b). Therefore, FIC's used oil was a hazardous waste within the meaning of §721.103(a)(2)(A).

30. Part 720 defines disposal as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwaters." §720.110. FIC's wanton dissemination of used oil in and around the Property, its discharge of rinsate containing used oil into the storm sewer, and its emission of used oil into the atmosphere, separately and collectively, constituted disposal within the meaning of §720.110.

31. Part 703 prohibits any person from conducting any hazardous waste storage or disposal operation at a facility for which a permit has not been issued under the Resource Conservation and Recovery Act ("RCRA"). §703.121(a).

32. A "facility" is defined, in pertinent part, as "all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste." §720.110. FIC used the Property for storing and disposing of hazardous waste. Therefore, the Property constitutes a "facility" within the meaning of §720.110.

33. On information and belief, FIC did not obtain a RCRA permit for the Property.

Therefore, FIC's disposal of hazardous used oil waste on and about the Premises violated §703.121(a), and thus violated §739.181(a).

Non-hazardous used oil

34. Alternatively, some of the used oil generated by FIC was non-hazardous, and thus could only be disposed in accordance with Parts 807 through 815. §739.181(b).

35. The requirements of Parts 810 through 817 were intended to supersede the requirements of Part 807, and persons and facilities subject to Parts 810 through 817 are not subject to Part 807. §807.105(c). FIC is subject to Part 815, pertaining to certain landfills, and is thus not subject to Part 807.

36. The definitions in §810.103 apply to Part 815. §810.101.

37. Part 810 defines "solid waste" to include "special waste," which in turn, includes "industrial process waste." §810.103. The Act defines "industrial process waste," in pertinent part, as "any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service." 415 ILCS 5/3.17. The Act defines "waste," in pertinent part, as "discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations." 415 ILCS 5/3.53. FIC generated the used oil as a direct result of manufacturing automobile parts, and discarded it by wantonly disseminating it throughout the Property and releasing it into the environment. Therefore, FIC's used oil is an industrial process waste, and as such, it is also a special waste and a solid waste within the meaning of §810.103.

38. Part 810 defines "disposal" in pertinent part, as follows: "If the solid waste is accumulated and not confined or contained to prevent its entry into the environment, or there is

no certain plan for its disposal elsewhere, such accumulation shall constitute disposal." §810.103. FIC's wanton dissemination of its used oil on and about the Property, as well as into the atmosphere and the storm sewers constitutes "accumulation and failure to confine" within the meaning of this definition. Additionally, on information and belief, FIC had no certain plan for the disposal of the used oil elsewhere. Therefore, FIC's dissemination of the used oil on and about the Property and into the atmosphere and storm sewers constitutes disposal under §810.103.

39. Part 810 defines a "landfill," in pertinent part, as "a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well." §810.103.

A. Part 810 defines a "unit" as a "contiguous area used for solid waste disposal." §810.103. Therefore, the Property, as operated by FIC, is a "unit" within the meaning of §810.103.

B. Part 810 defines a "facility" as "a "site and all equipment and fixtures on a site used to treat, store or dispose of solid or special wastes. A facility consists of an entire solid or special waste treatment, storage or disposal operation. All structures used in connection with or to facilitate the waste disposal operation shall be considered a part of the facility. A facility may include, but is not limited to, one or more solid waste disposal units, buildings, treatment systems, processing and storage operations, and monitoring stations." §810.103. FIC's disposal of its used oil waste on and about the Property caused the Property to become a "facility" within the meaning of §810.103.

C. Part 810 defines a "land application unit" in pertinent part as "an area where

wastes are agronomically spread over or disked into land or otherwise applied so as to become incorporated into the soil surface." The Property, as operated by FIC, is not a land application unit with the meaning of §810.103.

D. Part 810 defines surface impoundment, in pertinent part, as "a natural topographic depression, a man-made excavation, or a diked area . . . . " §810.103. The Property is not a surface impoundment within the meaning of §810.103.

E. The Property is not, and does not contain, an underground injection well.

40. FIC's wanton dissemination, placement and accumulation of used oil waste throughout the Property has caused the Property to fall within the scope of the definition of "landfill" as defined in §810.103.

41. Part 815 contains procedural requirements for all landfills exempt from the requirement to obtain a permit under 415 ILCS 5/21(d), which reads, in pertinent part, " . . . no permit shall be required for . . . any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated . . . "

42. The Act defines "site" as "any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder." 415 ILCS 5/3.45. FIC's use of the Property for generation, storage and disposal of used oil waste caused the Property to be subject to regulation and control by the Act and regulations thereunder. Therefore, the Property is a "site" within the meaning of the Act.

43. Pursuant to 415 ILCS 5/21(d), FIC was exempt from the requirement to obtain a permit,

because FIC stored and disposed its used oil wastes on the same site at which FIC generated such wastes. And because FIC caused the Property to become a landfill within the meaning of §810.103, the Property became subject to Part 815.

44. Part 815 requires that "all landfills regulated under this Part shall file an initial facility report with the Agency as specified in this Subpart to provide information concerning location and disposal practices of the facility." §815.201.

45. On information and belief, FIC has not filed the report required by §815.201, and therefore, has violated §815.201. In so doing, it has violated §739.181(b).

Prayer for Relief: Count II

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated §739.181 and;

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all used oil from any and all areas in or on which it has been disposed in violation of §739.181;

D. Award Complainant all costs it has incurred in investigating the effects of FIC's used oil handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to fifty thousand dollars ($50,000) for each violation of §739.181(a), and up to an additional ten thousand dollars ($10,000) for each day that the violation has continued.

F. Grant such other and further relief as this Board deems appropriate.

COUNT III
(Violation of 35 Ill. Adm. Code Part 815: Solid Waste Disposal)

46. Mate realleges Paragraphs 1 through 21, and 34 through 44, above, as if fully set forth in this Count III.

47. On information and belief, FIC has not filed the report required by §815.201, and therefore, has violated §815.201.

Prayer for Relief: Count III

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated §815.201;

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all used oil from any and all areas in or on which it has been disposed in violation of §815.201;

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to fifty thousand dollars ($50,000) for each violation of §815.201, and up to an additional ten thousand dollars ($10,000) for each day that the violation has continued.

F. Grant such other and further relief as this Board deems appropriate.

COUNT IV
(Violation of 35 Ill. Adm. Code Part 722: Hazardous Waste Generation)

48. Mate realleges Paragraphs 1 through 17, above, as if fully set forth in this Count IV.

49. Part 739 identifies certain types of used oil that are not regulated by Part 739, but rather by other parts of Illinois' plenary waste regulatory structure. In particular, mixtures of used oil and hazardous wastes that are listed in Part 721, Subpart D, are regulated under Parts 703, 720 through 726, and 728. §739.110(b).

50. Part 739 establishes a rebuttable presumption that used oil containing more than 1,000 ppm halogens has been mixed with such a listed hazardous waste. §739.110(b)(1)(B).

51. Some or all of FIC's used oil contained more than 1,000 ppm total halogens and was therefore subject to regulation as a hazardous waste under Parts 703 and 720 through 726. §739.110(b)(1)(A).

52. Part 722 requires persons who generate solid waste, as defined in §721.102, to determine if that waste is hazardous. §722.111.

53. Mate realleges Paragraph 26, above, as if fully set forth in this Count IV.

54. Mate realleges Paragraph 27, above, as if fully set forth in this Count IV.

55. The Act defines "generator" as "any person whose acto ro process produces waste." 415 ILCS 5/3.12. FIC's processes produced waste oil and therefore FIC was a generator of waste. But, on information and belief, FIC did not determine if its solid waste was hazardous. FIC thus violated §722.111.

Prayer for Relief: Count IV

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated §722.111;

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all hazardous used oil waste from any and all areas in or on which it has been improperly stored or disposed as a result of its violation of §722.111;

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to twenty-five thousand dollars ($25,000) for each day that FIC violated §722.111.

F. Grant such other and further relief as this Board deems appropriate.

COUNT V
(Violation of 35 Ill. Adm. Code Part 722: Hazardous Waste Storage)

56. Mate realleges Paragraphs 48 through 51, and Paragraphs 26 and 27, above, as if fully set forth in this Count V.

57. A "generator" is defined as "any person, by site, whose act or process produces hazardous waste identified or listed in 35 Ill. Adm. Code 721 or whose act first causes a hazardous waste to become subject to regulation." §721.110. FIC is a generator of hazardous waste because, on information and belief, its industrial processes first caused the hazardous waste to become subject to regulation.

58. "A generator that accumulates hazardous waste for more than 90 days is an operator of a

storage facility and is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 702, 703 and 705 . . . ." §722.134(b). On information and belief, FIC has accumulated hazardous waste throughout the Property for more than 90 days.

59. Mate realleges Paragraphs 31 and 32, above, as if fully set forth in this County V.

60. On information and belief, FIC did not obtain a RCRA permit for the Property.

Therefore, FIC's storage of hazardous waste on and about the Premises violated §703.121(a).

Prayer for Relief: Count V

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated §703.121(a);

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and remove all hazardous used oil waste from any and all areas in or on which it has been stored in violation of §703.121(a);

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to twenty-five thousand dollars ($25,000) for each day that FIC violated §703.121(a).

F. Grant such other and further relief as this Board deems appropriate.

COUNT VI
(Violation of 35 Ill. Adm. Code Part 722: Hazardous Waste Disposal)

61. Mate realleges Paragraphs 48 through 51, Paragraphs 26 and 27, and Paragraphs 30 through 32, above, as if fully set forth in this Count VI.

62. On information and belief, FIC did not obtain a RCRA permit for the Property. Therefore, FIC's disposal of hazardous waste on and about the Premises violated §703.121(a).

Prayer for Relief: Count VI

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated §703.121(a);

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and remove all hazardous used oil waste from any and all areas in or on which it has been disposed in violation of §703.121(a);

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to twenty-five thousand dollars ($25,000) for each day that FIC violated §703.121(a).

F. Grant such other and further relief as this Board deems appropriate.

COUNT VII
(Violation of 415 ILCS 5/21(e): Statutory Prohibition of Waste Storage and Disposal)

63. Mate realleges Paragraphs 1 through 13, above, as if fully set forth in this Count VII.

64. The Act's prohibition of uncontrolled waste storage and disposal states, in pertinent part,

No person shall . . .

> (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

415 ILCS 5/21(e).

65. Mate realleges Paragraph 21, above, as if fully set forth in this Count VII.

66. The Act defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. 415 ILCS 5/3.08. FIC's wanton dissemination of used oil into the environment and in and around the Property (and in and on the individuals thereon), constitutes "disposal" under this definition.

67. Mate realleges Paragraphs 37 through 44, above, as if fully set forth in this Count VII.

68. On information and belief, FIC has not filed the report required by §815.201, and therefore, has violated §815.201.

69. Therefore, FIC has violated 415 ILCS 5/21(e) by disposing of wastes at a facility that does not meet the requirements of this Act and of regulations and standards thereunder.

Prayer for Relief: Count VII

WHEREFORE, Complainant Mate respectfully requests that this Board grant the

following relief:

A. Find that Respondent FIC has violated 415 ILCS 5/21(e);

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all used oil waste from any and all areas in or on which it has been stored and/or disposed in violation of 415 ILCS 5/21(e);

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to fifty thousand dollars ($50,000) for each violation of 415 ILCS 5/21(e), and up to an additional ten thousand dollars ($10,000) for each day that the violation has continued.

F. Grant such other and further relief as this Board deems appropriate

COUNT VIII
(Violation of 415 ILCS 5/9(a): Statutory Prohibition of Air Pollution)

70. Mate realleges Paragraphs 1 through 13, above, as if fully set forth in this Count VIII.

71. The Act states, in pertinent part, as follows:

> No person shall:
>
> (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate

regulations or standards adopted by the Board under this Act.

415 ILCS 5/9(a).

72. The Act defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.06. The oil generated by FIC's industrial processes is a "contaminant" within the meaning of the Act.

73. The Act defines "air pollution" as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." 415 ILCS 5/3.02. The oil emitted to the atmosphere by FIC's industrial operations has injured the Property by causing areas of the Property to be coated with a black film. For the same reason, it has also unreasonably interfered with the enjoyment of the Property. FIC's emission of oil has also been injurious to human health because it has been inhaled by persons in and near the Property. FIC's emission of used oil thus falls within the scope of the term, "air pollution," as defined by the Act.

74. Because FIC tended to cause, and did cause, air pollution at the Property, FIC violated the prohibition in 415 ILCS 5/9(a).

Prayer for Relief: Count VIII

WHEREFORE, Complainant Mate respectfully requests that this Board grant the following relief:

A. Find that Respondent FIC has violated 415 ILCS 5/9(a);

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all used oil from any and all areas in or on which it has been improperly discharged or emitted by virtue of FIC's violation of 415 ILCS 5/9(a).

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to fifty thousand dollars ($50,000) for each violation of 415 ILCS 5/9(a), and up to an additional ten thousand dollars ($10,000) for each day that the violation has continued.

F. Grant such other and further relief as this Board deems appropriate

COUNT IX
(Violation of 415 ILCS 5/21(e): Statutory Prohibition of Water Pollution)

75. Mate realleges Paragraphs 1 through 13, above, as if fully set forth in this Count IX.

76. The Act states, in pertinent part, as follows:

> No person shall:
>
> (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.
>
> 415 ILCS 5/12(a).

77. Mate realleges Paragraph 72, as if fully set forth in this Count IX.

78. The Act defines "water pollution" as "such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any

contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock wild animals, birds, fish, or other aquatic life." 415 ILCS 5/3.55.

79. The storm sewers on the Property lead to Springbrook Creek, which runs through Itasca, Illinois, and subsequently, to Salt Creek, which is also partly or wholly in Illinois. The Act defines "waters" as "all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State." 415 ILCS 5/3.56. Springbrook Creek and Salt Creek are thus within the scope of "waters of the State" as used in the Act.

80. On information and belief, by discharging oil wastes into the storm sewers leading to Springbrook Creek, FIC altered the physical and chemical properties of Springbrook Creek in such manner as was likely to create a nuisance and render such waters harmful, detrimental, and injurious to public health, safety and welfare, and to commercial and other legitimate uses.

81. By wantonly and intentionally discharging oil into the storm sewer at the Property, and thus into Springbrook Creek, FIC has caused, threatened and allowed the discharge of contaminants so as to cause and tend to cause water pollution in Illinois.

82. Illinois regulations prohibit the discharge of any contaminant into the waters of the Sate from a point source except in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES"). §309.102.

83. The Illinois regulations adopt the definitions of the federal Clean Water Act with respect to terms relating to NPDES. §301.325. "Point source" is such a term, and is defined as "any

discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. 40 CFR §122.2. The term, "pollutant" includes solid waste and industrial waste. 40 CFR §122.2.

84. The oil generated by FIC's industrial processes is solid waste and industrial waste, and thus a "pollutant." Further, the storm sewer is a discrete conveyance from which pollutants are discharged, in this case to Spring Lake. Therefore, the storm sewer on the Property is a point source within the meaning of 40 CFR §122.2.

85. On information and belief, FIC did not obtain an NPDES permit for the discharge of its oil wastes via the storm sewer on the Property.

86. Discharge permit ILR005471 was issued for the Property. That permit allows solely discharges of "storm water," which it defines as "water runoff, snow melt runoff, and surface runoff and drainage." The oil waste that FIC caused to be discharged to the storm sewer was not storm water, and therefore such discharge(s) were not authorized by discharge permit ILR005471.

87. Therefore, FIC violated the prohibition of 415 ILCS 5/12(a) because it caused, threatened and allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, and because it violated §309.102 by discharging contaminants in absence of an NPDES permit.

Prayer for Relief: Count IX

WHEREFORE, Complainant Mate respectfully requests that this Board grant the

following relief:

A. Find that Respondent FIC has violated 415 ILCS 5/12(a);

B. Order the Respondent to cease and desist from further violation of the Act and associated regulations;

C. Order the Respondent to remediate the Property and lawfully remove all used oil from any and all areas in or on which it has been improperly discharged by virtue of FIC's violation of 415 ILCS 5/12(a);

D. Award Complainant all costs it has incurred in investigating the effects of FIC's waste handling practices. (For purposes of this Citizens' Complaint only, such costs are not intended to include attorneys' fees.)

E. Assess against the Respondent a monetary penalty of up to ten thousand dollars for each day of violation of 415 ILCS 5/12(a).

F. Grant such other and further relief as this Board deems appropriate

Respectfully submitted,

MATE TECHNOLOGIES, INC.

By: Carey S. Rosemarin

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CERTIFICATE OF SERVICE

I, Carey S. Rosemarin, an attorney, hereby certify that I caused a copy of the foregoing Notice of Filing and Complaint to be served upon the parties listed on the Service List below, by depositing same with Federal Express on October 23, 2003.

Carey S. Rosemarin
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Service List

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Masuda, Funai, Eifert & Mitchell, Ltd.
Registered Agent for
F.I.C. AMERICA CORPORATION
One E. Wacker Dr.
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Chicago , IL 60601-2002

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CLERK'S OFFICE
OCT 2 4 2003
STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, Carey S. Rosemarin, an attorney, hereby certify that I caused a copy of the foregoing Notice of Filing and Complaint to be served upon:

Masuda, Funai, Eifert & Mitchell, Ltd.
Registered Agent for
F.I.C. AMERICA CORPORATION
One E. Wacker Dr.
Suite 3200
Chicago , IL 60601-2002

by certified mail, return receipt requested, on October 23, 2003.

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