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OCT 14 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

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

No. PCB 05-049

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the listed documents, by first class mail, upon the listed persons: *on 10/13/04*

MOTION TO JOIN AGENCY AS PARTY IN INTEREST AND TO EXTEND TIME TO RESPOND TO MOTION TO DISMISS
AFFIDAVIT IN SUPPORT OF MOTION TO JOIN AGENCY AND EXTEND TIME TO RESPOND TO MOTION TO DISMISS
COMPLAINT (to Agency only)
MOTION TO DISMISS (to Agency only)

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Morton F. Dorothy, Complainant

Morton F. Dorothy
804 East Main
Urbana IL 61802
217/384-1010

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MOTION TO JOIN AGENCY AS PARTY IN INTEREST
AND TO EXTEND TIME TO RESPOND TO MOTION TO DISMISS

Complainant, Morton F. Dorothy, moves that the Board join the Illinois Environmental Protection Agency (Agency) as a party in interest, and extend the time for response to the motion to dismiss filed on or about October 7, 2004, and for reason states as follows:

1. As alleged in paragraph 12 of the complaint, prior to the incident alleged in the complaint, respondent claimed that the facility operated pursuant to 35 Ill. Adm. Code 703.123(a) and 722.134(a), as a large quantity generator of hazardous waste which is treated on-site in tanks, without a RCRA permit or interim status.
2. Based on correspondence between respondent and the Agency, respondent has claimed exemption pursuant Sections 703.123(a) and 722.134(a) at least since March, 2001.
3. Sections 703.123(a) and 722.134(a) limit storage of hazardous waste to 90 days, require compliance the contingency plan and other Board rules, and require a RCRA permit or interim status if the storage exceeds 90 days.
4. Respondent filed a motion to dismiss the complaint on or about October 7, 2004.
5. Rather than arguing Sections 703.123(a) and 722.134(a), the motion to dismiss claims that the facility is exempt from the RCRA permit requirement based on the "elementary treatment unit" and "wastewater treatment unit" exclusions. If accepted by the Board, this argument would allow the facility to operate outside the RCRA program, without complying with the conditions of Section 722.134(a).
6. Respondent appears to be repudiating longstanding regulatory interpretations arrived at between the Agency and the respondent. The Agency needs to be

notified of this, and be given the opportunity to review its files in this matter to determine how the earlier agreements as to the permit status for this facility were arrived at.

7. Although complainant has information regarding the plating line at this facility, complainant has very little information concerning the painting line and other units at the facility. In particular, it is possible that there are hazardous waste treatment and storage units at the facility about which complainant has no knowledge, and which control the proper determination of the permit status.
8. Determining whether the facility is exempt from the RCRA permit requirement pursuant to the "elementary neutralization unit" and "wastewater treatment unit" exclusions requires an overall assessment of all the units at the facility, which would require inspections and input from the Agency.
9. The Agency has an interest in the proper application of the RCRA permit requirement to the facility, which interest may be determined by the Board's order in this case.
10. Joinder of the Agency as a party in interest is allowed pursuant to 35 Ill. Adm. Code 101.404.
11. Complainant is not requesting that the Agency take a position on the merits of the case.
12. Complainant will serve a copy of this motion, together with a copy of the complaint and motion to dismiss, on the Agency.

WHEREFORE complainant prays:

- A. That the Board order the Agency joined as a party in interest..
- B. That the Board request that the Agency respond to the motion to dismiss filed by the respondent on or about October 7, 2004, specifically addressing the question of RCRA permit status, which exemptions from the RCRA permit requirement apply, and listing the treatment, storage and disposal units at the facility.
- C. That the Board extend the time for responding to the motion to dismiss to allow the Agency reasonable time to respond.

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