

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

**RECEIVED**  
CLERK'S OFFICE

APR 28 2005

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

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 05-049

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that, on the 22 day of April, 2005, I served the listed documents, by first class mail, upon the listed persons:

**MOTION TO COMPEL RESPONSE TO INTERROGATORIES**  
**MOTION TO COMPEL RESPONDENT TO ADMIT THE TRUTH OF CERTAIN FACTS**  
**MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

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*Morton F. Dorothy*

Morton F. Dorothy, Complainant

Morton F. Dorothy  
804 East Main  
Urbana IL 61802

217/384-1010

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**MOTION TO COMPEL RESPONSE TO INTERROGATORIES**

Complainant Morton F. Dorothy moves that the Hearing Officer order respondent Flex-N-Gate Corporation to respond to interrogatories propounded by complainant.

1. In response to Question 9, respondent has refused to provide complete information on certain employees, citing Illinois Rule of Professional Conduct 4.2. That rule does not limit the scope of discovery. Nor does that rule apply to the complainant in a Board enforcement action.
2. Respondent objects to questions number 15, 16, 17 and 20 on the grounds that "OSHA issues" are irrelevant to this litigation, and that "Complainant has filed a complaint against Flex-N-Gate before OSHA" and that it is "improper for Complainant to use discovery in this litigation to seek to seek information regarding that OSHA matter".
3. Complainant is not a party to the OSHA proceeding concerning this incident. Complainant has not been allowed to attend hearings, testify, present evidence or examine witnesses.
4. The allowable scope of discovery is governed by Section 101.616(a):  
  
All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130. (35 Ill. Adm. Code 101.616(a))
5. Although the information complainant seeks might be relevant in the OSHA proceeding, respondent has cited no rule limiting the scope of discovery in one proceeding to items that are relevant only to that proceeding and to no other.

6. Rather than prepare a separate "emergency response plan" under OSHA rules and a "contingency plan" under Board rules, respondent appears to have prepared a single "Emergency Response and Contingency Plan" to meet both requirements. Complainant believes this was a legal and proper thing to have done. Having done this, however, respondent cannot now complain that the "OSHA issues" are "irrelevant" and not "calculated to lead to the discovery of relevant information".
7. Question 20 is seeking an admission from respondent that measurement of hydrogen sulfide was required for confined space entry. Respondent has now admitted this in response to a different question. Complainant therefore withdraws question 20.

WHEREFORE complainant moves that the hearing officer order respondent to answer interrogatories 9, 15, 16 and 17.

  
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**MOTION TO COMPEL RESPONDENT TO ADMIT THE TRUTH OF CERTAIN FACTS**

Complainant Morton F. Dorothy moves that the Hearing Officer order respondent Flex-N-Gate Corporation to admit or deny the truth of certain statements as requested by complainant.

1. Respondent objects to Requests 9 and 10 on the grounds that "OSHA issues" are irrelevant to this litigation, and that "Complainant has filed a complaint against Flex-N-Gate before OSHA" and that it is "improper for Complainant to use discovery in this litigation to seek to seek information regarding that OSHA matter".
2. Complainant is not a party to the OSHA proceeding concerning this incident. Complainant has not been allowed to attend hearings, testify, present evidence or examine witnesses.

3. The allowable scope of discovery is governed by Section 101.616(a):

All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130. (35 Ill. Adm. Code 101.616(a))

4. Section 101.618(d) provides:

Request for Admission of Fact. A party may serve a written request for admission of the truth of specific statements of fact on any other party. (35 Ill. Adm. Code 101.618(d))

5. Although the admission complainant seeks might be relevant in the OSHA

proceeding, respondent has cited no rule limiting the scope of discovery in one proceeding to items that are relevant only to that proceeding and to no other.

6. Rather than prepare a separate "emergency response plan" under OSHA rules and a "contingency plan" under Board rules, respondent appears to have prepared a single "Emergency Response and Contingency Plan" to meet both requirements. Complainant believes this was a legal and proper thing to have done. Having done this, however, respondent cannot now complain that the "OSHA issues" are "irrelevant" and not "calculated to lead to the discovery of relevant information".
7. Requests 9 and 19 ask respondent to admit that complainant and Afiba Martin received 24-hour "hazwoper" training from respondent. Such trained individuals have a role in respondent's Emergency Response and Contingency Plan.

WHEREFORE complainant moves that the hearing officer order the respondent to either admit or deny the truth of statements 9 and 10.

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**MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Complainant Morton F. Dorothy moves that the Hearing Officer order respondent Flex-N-Gate Corporation to produce documents requested by complainant.

1. Respondent objects to Requests 3, 4, 16, 17 and 18 on the grounds that "OSHA issues" are irrelevant to this litigation, and that "Complainant has filed a complaint against Flex-N-Gate before OSHA" and that it is "improper for Complainant to use discovery in this litigation to seek to seek information regarding that OSHA matter".
2. Complainant is not a party to the OSHA proceeding concerning this incident. Complainant has not been allowed to attend hearings, testify, present evidence or examine witnesses.
3. The allowable scope of discovery is governed by Section 101.616(a):

All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130. (35 Ill. Adm. Code 101.616(a))

4. Although the information complainant seeks might be relevant in the OSHA proceeding, respondent has cited no rule limiting the scope of discovery in one proceeding to items that are relevant only to that proceeding and to no other.
5. Rather than prepare a separate "emergency response plan" under OSHA rules and a "contingency plan" under Board rules, respondent appears to have prepared a single "Emergency Response and Contingency Plan" to meet both requirements. Complainant believes this was a legal and proper thing to have

done. Having done this, however, respondent cannot now complain that the "OSHA issues" are "irrelevant" and not "calculated to lead to the discovery of relevant information".

6. Complainant never had direct access to the emergency response and contingency plan prior to the August 5 incident. Complainant instead received training from respondent as to how to deal with emergencies pursuant to the plan. Request 18 is directed at obtaining the training materials. The training materials are obviously relevant to respondent's interpretation of the plan.
7. Request 7 asked for "Maintenance log and maintenance work orders for the plating line for August 5 through August 8, 2004". The first work order produced was initiated by Larry Kelly at 07:28 on 08-05-04. However, Afiba Martin's statement, produced elsewhere, refers to a work order he initiated several hours earlier. That work order has not been produced. Nor do any other work orders appear for third shift of August 4-5, 2004, during which shift the incident happened.
8. Request 15 read: "Account of the incident that is the subject of the complaint delivered to Tony Rice on or about August 9, 2004." Respondent has stated that it does not know to what this request refers, and asked for further information as to the author. The author was the complainant, who hand-delivered a written account of the incident to Tony Rice, Plating Manager, on or about August 9, 2004.
9. Denny Corbett was a witness to some of the events in this incident. It is reasonable to expect that he will be called as a witness at the hearing, in which case his credibility will be an issue. Complainant is aware that Denny Corbett has made several false statements, including statements made in writing to OSHA in its investigation of this incident. One of these statements concerns "threat letters that if we did not hire this employee back he would make it difficult for Guardian West by calling local and federal agencies". Request 18 is for copies of the "threat letters". A false statement made by a witness is relevant to credibility regardless of whom the statement is made to.
10. Request 7 asked for "Maintenance log and maintenance work orders for the plating line for August 5 through August 8, 2004". The first work order produced was initiated by Larry Kelly at 07:28 on 08-05-04. However, Afiba Martin's statement, produced elsewhere, refers to a work order he initiated several hours earlier. That work order has not been produced. Nor do any other work orders appear for third shift of August 4-5, 2004, during which shift the incident happened.

WHEREFORE complainant prays that the hearing officer order the respondent to produce the documents requested in Requests 3, 4, 7, 15, 16, 17 and 18.

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