

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**  
CHAMPAIGN COUNTY, ILLINOIS CLERK'S OFFICE

JUL 22 2005

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, on the 20 day of July, 2005, I served the listed documents, by first class mail, upon the listed persons:

**MOTION TO SUBSTITUTE AFFIDAVITS  
MOTION TO STRIKE UNSUPPORTED STATEMENTS AND FOR ADMONISHMENT  
OF RESPONDENT**

Thomas G. Safley  
Hodge Dwyer Zeman  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, IL 62705-5776

Carol Webb  
Hearing Officer, IPCB  
1021 North Grand Avenue East  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph  
Suite 11-500  
Chicago, Illinois 60601

Morton F. Dorothy  
104 W University, SW Suite  
Urbana IL 61801  
217/384-1010

Morton F. Dorothy  
Morton F. Dorothy, Complainant

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No. PCB 05-049

**MOTION TO STRIKE UNSUPPORTED STATEMENTS AND FOR ADMONISHMENT  
OF RESPONDENT**

Complainant Morton F. Dorothy, moves that the Board strike false statements made in motions, and to admonish Respondent Flex-N-Gate Corporation to stick to the facts as developed in this case so far, and as reason states as follows:

1. On July 8, 2005, respondent filed a Response to Complainant's Motion for Partial Summary Judgment as to Count I.
2. Complainant has filed a Motion to Substitute Affidavits, and Substituted Affidavit, which affidavit also supports this motion.
3. Respondent made the following statements on p.12 of the Response:
  - a. "Regarding the factual assertion that "respondent has now admitted, that respondent is conducting hazardous waste treatment and storage operations without a RCRA permit," ... the Board must strike this assertion because it is unsupported."
  - b. "The same is true of Complainant's statement in paragraph 21 of his Response to Motion for Summary Judgment that "respondent has admitted that it is conducting hazardous waste treatment and storage operations without a RCRA permit."
4. Respondent has made the following admission in response to discovery in this case:

Flex-N-Gate admits that it is "a large quantity generator of hazardous waste." Flex-N-Gate admits that it treats some of its hazardous waste "on-site in tanks," but denies that it treats all of its hazardous waste "on-site in

tanks." Flex-N-Gate admits that it does not have "a RCRA permit or interim status". To the extent that Request to Admit No. 8 makes any other statements of fact, Flex-N-Gate denies the same. (Request to Admit, par. 6 and 8)

5. The above admission was set forth in par. 3 of Complainant's Motion for Partial Summary Judgment.
6. Complainant acknowledges that he omitted to specifically reference a source for the admissions concerning hazardous waste storage operations. These are contained in the Affidavit of James Dodson that was attached as Exhibit C to Respondent's Motion for Summary Judgment, to which motion Complainant was responding:
  - a. "Following dewatering, sludge is placed into a satellite accumulation container in preparation for placement into 90-day accumulation containers, where it is accumulated before it is shipped off-site for recycling." (Par. 9, Affidavit of James Dodson that was attached to Exhibit C to Respondent's Motion for Summary Judgment.)
  - b. "The sludge that the Facility's Wastewater Treatment Equipment generates is a hazardous waste as defined in 35 Ill. Adm. Code § 721.103." (Par. 15, Affidavit of James Dodson that was attached to Exhibit C to Respondent's Motion for Summary Judgment.)
7. Complainant is at a loss to understand how respondent is able to admit that it is treating hazardous waste, storing hazardous waste and does not have a RCRA permit, and still deny that it is "conducting hazardous waste treatment and storage operations without a RCRA permit."

WHEREFORE complainant prays:

1. That the Board strike the following statements from p. 12 of Respondent's Response to Complainant's Motion for Partial Summary Judgment as to Count I.

Regarding the factual assertion that "respondent has now admitted, that respondent is conducting hazardous waste treatment and storage operations without a RCRA permit," ... the Board must strike this assertion because it is unsupported.

The same is true of Complainant's statement in paragraph 21 of his Response to Motion for Summary Judgment that "respondent has admitted that it is conducting hazardous waste treatment and storage operations without a RCRA permit.

2. That the Board admonish Respondent to cease denying facts that it has already admitted in this case.

Morton F. Dorothy

Morton F. Dorothy, Complainant

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

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**MOTION TO SUBSTITUTE AFFIDAVITS**

Complainant Morton F. Dorothy, moves that the Board allow him to substitute affidavits in support of his Motion for Partial Summary Judgment as to Count I and as reason says as follows:

1. On June 20, 2005, complainant served a Motion for Summary Judgment as to Count I.
2. On July 8, 2005, respondent Flex-N-Gate Corporation, filed a Motion to Strike Affidavits Filed and Unsupported Statements Made in Support of Complainant's Summary Judgment Filings and Motion for Admonishment of Complainant.
3. Complainant believes that the factual issues in this case are much too complex to be tried by affidavit, and would prefer to see the Board deny all motions for summary judgment, and turn the case back over to the Hearing Officer. Complainant is, however, forced to engage in this war of affidavits.
4. Rather than argue the sufficiency of the affidavit made in support of the Motion for Partial Summary Judgment, complainant wishes to provide a more detailed affidavit meeting the objections raised by respondent.
5. Complainant has also objected to the lack of exhibits attached to the affidavit. Complainant does not feel that it is necessary to attach copies of documents that are already on file in this case.
  - a. Complainant is an unemployed factory worker who uses coin-operated, public copying machines. Making duplicative copies of documents in this manner is extraordinarily time-consuming and expensive. To the extent the Board may agree with the respondent that such duplicative copies are required, complainant requests leave to dispense with them in this case.

WHEREFORE complainant prays that the Board grant leave to substitute affidavits, and leave to dispense with exhibits which duplicate materials already filed in this case.

Morton F. Dorothy  
Morton F. Dorothy, Complainant

State of Illinois                    )  
  )        ss  
County of Champaign            )

**SUBSTITUTED AFFIDAVIT**

Complainant Morton F. Dorothy makes the following substituted affidavit in support of his motion for partial summary judgment as to Count I:

1. Respondent, Flex-N-Gate Corporation, is conducting hazardous waste treatment operations at the Guardian West facility.
  - a. Respondent has admitted that it "it treats some of its hazardous waste on-site in tanks". (Response to Request to Admit, par. 8).
  - b. Respondent has also admitted that it: "claims exemption from the RCRA permit requirement pursuant to 35 Ill. Adm. Code 703.123(a) and 722.134(a) with respect to one or more wastes generated by the Guardian West facility". (Response to Supplemental Request to Admit, par. 1) Implicit within this admission is an admission that it is conducting hazardous waste treatment or storage operations for which, but for that exemption, it would be required to obtain a RCRA permit
  - c. Complainant was told by respondent's agents, in job-related training, in the ordinary course of business, that respondent was conducting hazardous waste treatment operations at the Guardian West facility.
2. Respondent, Flex-N-Gate Corporation, is conducting hazardous waste storage operations at the Guardian West facility.
  - a. Following dewatering, sludge is placed into a satellite accumulation container in preparation for placement into 90-day accumulation containers, where it is accumulated before it is shipped off-site for recycling. (Par. 9, Affidavit of James Dodson that was attached to Exhibit C to Respondent's Motion for Summary Judgment.)

- b. The sludge that the Facility's Wastewater Treatment Equipment generates is a hazardous waste as defined in 35 Ill. Adm. Code § 721.103. (Par. 15, Affidavit of James Dodson that was attached to Exhibit C to Respondent's Motion for Summary Judgment.)
  - c. Complainant was told by respondent's agents, in job-related training, in the ordinary course of business, that respondent was conducting hazardous waste storage operations at the Guardian West facility.
  - d. Complainant has observed hazardous waste storage operations at the facility, including hazardous waste in containers marked by respondent's agents as hazardous waste.
  - e. In the course of his employment at the facility, complainant has placed hazardous waste into containers, marked as "hazardous waste," for storage.
3. Respondent does not have a RCRA permit or interim status for the Guardian West facility.
- a. Respondent has admitted that it does "does not have 'a RCRA permit or interim status.'"(Response to Request to Admit, par. 8)
  - b. Respondent has also admitted that it: "claims exemption from the RCRA permit requirement pursuant to 35 Ill. Adm. Code 703.123(a) and 722.134(a) with respect to one or more wastes generated by the Guardian West facility". (Response to Supplemental Request to Admit, par. 1) Implicit within this admission is an admission that it does not have a RCRA permit.
4. There is no genuine issue of fact as to Count I.
- a. Complainant has examined the file in this case and found no relevant information suggesting that the Board should do anything other than grant summary judgment to Complainant as to Count I.

Morton F. Dorothy  
Morton F. Dorothy, Complainant

The undersigned, a notary public in and for the aforesaid County and State, certifies that the above person appeared before me and signed the foregoing document on the 20<sup>th</sup> day of July, 2005,

  
Notary Public



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

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Morton F. Dorothy  
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State of Illinois                    )  
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County of Champaign        )

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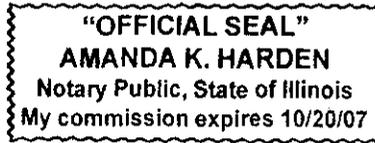
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Morton F. Dorothy  
Morton F. Dorothy, Complainant

The undersigned, a notary public in and for the aforesaid County and State, certifies that the above person appeared before me and signed the foregoing document on the 20<sup>th</sup> day of July, 2005,

  
\_\_\_\_\_  
Notary Public



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