

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 20 2004

STATE OF ILLINOIS
Pollution Control Board

MATE TECHNOLOGIES, INC.

Complainant,

v.

F.I.C. AMERICA CORPORATION

Respondent.

PCB No. 2004-075
(Enforcement X)

NOTICE OF FILING

TO: Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.
500 Skokie Boulevard, Suite 510
Northbrook, IL 60062

PLEASE TAKE NOTICE that on the 20th day of February, 2004 F.I.C AMERICA CORPORATION, by and through its attorneys, Jeremy A. Gibson and Mitchell Chaban of MASUDA, FUNAI, EIFERT & MITCHELL, LTD., shall file its **RESPONSE OF RESPONDENT IN OPPOSITION TO COMPLAINANT'S MOTION TO EXTEND TIME TO RESPOND TO RESPONDENT'S DISCOVERY AND TO ESTABLISH DISCOVERY SCHEDULE** with the Office of the Clerk of the Pollution Control Board , a copy of which is hereby served upon you.


One of Its Attorneys

Jeremy A. Gibson
Mitchell S. Chaban
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
203 N.LaSalle Street, Suite 2500
Chicago, Illinois 60601
(312) 245-7500

PROOF OF SERVICE

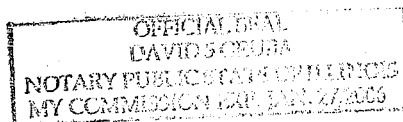
I, the undersigned, do hereby state on oath that I served the foregoing **NOTICE OF FILING** upon Carey S. Rosemarin, Law Offices of Carey S. Rosemarin, P.C. 500 Skokie Boulevard, Suite 510, Northbrook, IL 60062 by placing a copy of the same in a properly addressed, postage prepaid, envelopes and depositing the same in the U.S. Mail Chute at 203 N. LaSalle Street Suite 2500, Chicago, Illinois 60601 on this 20 day of February, 2004.

[Signature]

Subscribed and sworn to before me this
20 day of February, 2004.

[Signature]

Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 20 2004

STATE OF ILLINOIS
Pollution Control Board

MATE TECHNOLOGIES, INC.)
)
Complainant,)
)
v.)
)
F.I.C. AMERICA CORPORATION)
)
Respondent.)

PCB No. 2004-075
(Enforcement X)

**RESPONSE OF RESPONDENT IN OPPOSITION TO COMPLAINANT'S
MOTION TO EXTEND TIME TO RESPOND TO RESPONDENT'S
DISCOVERY AND TO ESTABLISH DISCOVERY SCHEDULE**

Respondent, F.I.C. AMERICA CORPORATION ("FIC") opposes Complainant's Motion to Extend Time to Respond to Respondent's Discovery and to Establish Discovery Schedule ("Motion") as follows:

1. Complainant, MATE TECHNOLOGIES, INC. ("Mate") filed a nine-count citizen complaint against FIC, its tenant, alleging violations of the Illinois Environmental Protection Act. FIC has moved to dismiss the complaint and has propounded its initial discovery requests to Mate. In turn, Mate has moved to stay its response to such requests on the basis that FIC has not answered the Complaint, the Hearing Officer has set no discovery schedule and the parties may have settlement discussions.

2. Mate has chosen to initiate litigation against FIC, which litigation FIC believes to be both legally and factually deficient. Now, having started the litigation and alleging numerous violations, Mate is asking that it should not have to provide information relevant to the Complaint in order for FIC to defend itself. This is highly unusual for the complaining party and is not supported by either the Illinois Pollution

Control Board rules, 35 Ill. Adm. Code 101.610-101.616 or the Illinois, Code of Civil Procedure or Supreme Court Rules referred to therein. Nothing in the relevant discovery authorities precludes FIC from preparing its factual defense. The relevant Board rules simply provide for the setting of a schedule, which primarily concerns the time for completing discovery; they do not prohibit any particular starting time. In fact, the Supreme Court rules expressly provide that discovery may commence without leave of court after all parties have appeared and may be conducted in any sequence. Ill.Sup.Ct. R. 201(d)-(e). Mate's reluctance to proceed with what it has started simply reinforces the questionable nature of the Complaint explained in the motion to dismiss.

3. If Mate had wanted to provide time for discussion of settlement, it simply had to ask FIC for an extension for such purposes. Similarly, if Mate needed additional time to respond to discovery, it simply had to ask FIC for an extension for such purposes. Mate made no such extension requests to FIC before asking for a stay. If Mate had asked, FIC would have been willing to extend the time until March 1, 2004, but not beyond.

4. If Mate believes that any of the discovery requests were impermissible or overly burdensome, it simply could note that in its responses and then the parties could have attempted to work out any discovery disputes before bringing them here, as contemplated by the applicable rules. Mate made no such attempt to communicate with FIC about the scope of the discovery requests.¹

¹ Mate suggests that FIC's requests for information or documents depicting the construction of, operations at and chemicals at the relevant property are not calculated to lead to discovery of admissible evidence. However, the Complaint essentially alleges that the property interior has been contaminated and that such situation should be corrected. As Mate and many other persons conducted manufacturing operations at such property for decades before FIC occupied it, and a remedy, if any, would depend upon the condition at the beginning of the occupancy, FIC's information requests were intended to identify historic, pre-existing contaminants and sources and were exceedingly reasonable and typical of alleged contamination cases.

5. In addition to desiring to refute Mate's allegations as soon as possible, whether legally through the motion to dismiss or factually through discovery, FIC would be prejudiced by a delay in discovery. FIC's lease of the property at issue expires on April 15, 2004. Unjustified delay of discovery would prevent FIC from conducting further investigation of the property that may be suggested by timely responses by Mate to FIC's discovery requests. In addition, delay will exacerbate the possibility that the activities of a third party, the next occupant, to affect the conditions at the relevant property.

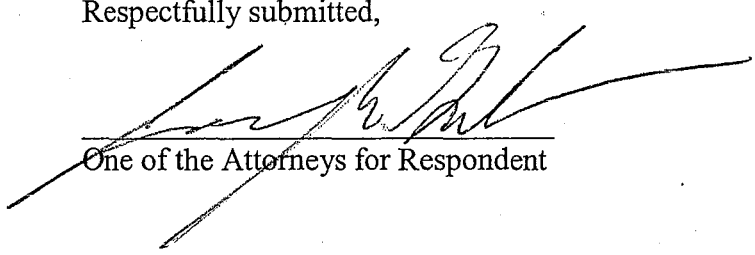
6. As explained in the motion to dismiss, the nine counts of the Complaint all arise from the same basic set of circumstances. Even the partial dismissal of the Complaint will have no bearing on the scope of discovery.

7. While asking to delay its time to respond to FIC's discovery requests, Mate has not said that it intends to delay propounding discovery to FIC. It is patently unfair for Mate to ask for additional time or a stay, without addressing its own discovery requests.

Additionally, of course, Mate may opt to submit responsive documents in lieu of responding in detail in writing to interrogatories.

For the foregoing reasons, FIC opposes any further delay of Mate's responses to FIC's initial discovery requests and asks that Mate be ordered to respond within seven days of the Hearing Officer's order as to Mate's motion.

Respectfully submitted,

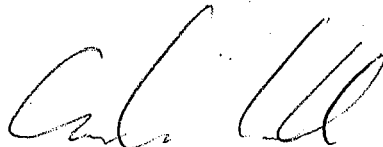


One of the Attorneys for Respondent

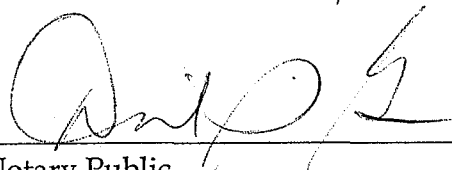
Jeremy A. Gibson
Mitchell S. Chaban
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
203 North LaSalle Street, Suite 2500
Chicago, Illinois 60601

PROOF OF SERVICE

I, the undersigned, do hereby state on oath that I served the foregoing **RESPONSE OF RESPONDENT IN OPPOSITION TO COMPLAINANT'S MOTION TO EXTEND TIME TO RESPOND TO RESPONDENT'S DISCOVERY AND TO ESTABLISH DISCOVERY SCHEDULE** upon Carey S. Rosemarin, Law Offices of Carey S. Rosemarin, P.C. 500 Skokie Boulevard, Suite 510, Northbrook, IL 60062 by placing a copy of the same in a properly addressed, postage prepaid, envelopes and depositing the same in the U.S. Mail Chute at 203 N. LaSalle Street Suite 2500, Chicago, Illinois 60601 on this 20 day of February, 2004.



Subscribed and sworn to before me this 20 day of February, 2004.



Notary Public

