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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

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 13 day of February, 2006, I served the listed documents, by first class mail, upon the listed persons:

**RESPONSE TO INTERROGATORIES
THIRD INTERROGATORIES**

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
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Morton F. Dorothy
Morton F. Dorothy, Complainant

Morton F. Dorothy
104 W. University
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1. Complainant does not have detailed information to respond to this question, apart from the documents produced by Respondent in discovery, which are in Respondent's possession, and which are too voluminous to fully summarize. Evidence that Respondent is treating and storing hazardous waste includes the following:
 - a. Respondent has produced a "Contingency Plan" which represents that it was prepared to meet the Board's regulations governing hazardous waste management facilities in 35 Ill. Adm. Code 725. (Response to Request for Production No. 1, p. 6-12)
 - b. On January 19, 2001, The Illinois Environmental Protection Agency conducted a RCRA inspection which found numerous violations of the Board's rules governing hazardous waste management, including rules governing the storage of hazardous waste, and violations of the contingency planning requirements. The Agency contended that, because of the violations, the facility failed to qualify for exemption from the RCRA permit requirement. On May 3, 2001, Respondent answered the Agency with a detailed letter promising to come into compliance with the regulations, without raising any arguments to the effect that the facility was not conducting hazardous waste management operations. (Response to Request for Production No. 13)
 - c. Respondent has produced manifests showing large quantities of hazardous waste shipped out of the facility. (Response to Request for Production No. 9)

- d. In the course of job training, Complainant was told by Respondent's agent's, in the course of business, that the facility was treating and storing hazardous waste.
 - e. Ken Keigley and Holly Hirschert of the Illinois Environmental Protection Agency have told the Complainant that the facility was conducting hazardous waste treatment and storage operations pursuant to a claim of exemption as a large quantity generator of hazardous waste. Prior to taking her position with the Agency, Holly Hirschert was the environmental engineer for the Guardian West facility, with responsibility over many of these hazardous waste management operations.
 - f. Complainant was required to segregate certain wastes for separate disposal as hazardous waste, including chromic acid contaminated wastes from the area under the catwalk, and from the chromic acid recovery operation, which wastes were placed in containers labeled "hazardous waste", with storage times noted, by the Environmental Manager at Guardian West.
- 2. The Complaint speaks for itself as to the allegation. The question calls for a legal conclusion, and/or requests Complainant's work product. Complainant contends that the material under the catwalk, including liquids, debris and sludge, is hazardous waste. At a minimum, this is chromic acid contaminated waste.
 - 3. Pursuant to a Freedom of Information Act request, Illinois Environmental Protection Agency has told the Complainant that the facility does not have a RCRA permit or interim status. Ken Keigley and Holly Hirschert of the Illinois Environmental Protection Agency have told the Complainant the same thing. Respondent has failed to produce a RCRA permit or interim status notification in response to discovery requests. See also the Response to Question 1. The remainder of the question calls for a legal conclusion, and/or requests Complainant's work product.
 - 4. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product.
 - 5. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is a "wastewater treatment unit".
 - 6. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is a "tank" or

"tank system" (other than the tanks involved in the production process).

7. Complainant generally agrees with this statement. However, Complainant does not know exactly where the pits are located with respect to the center of the room. Moreover, the pits are actually located to the east and west of the approximate center of the room, and the floor under the tanks appears to be sloped toward the line between the pits, rather than the apparent central point.
8. Complainant agrees that this is a part of the purpose of the slope of the floor.
9. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
10. Complainant generally agrees with this statement. However, the pits were not designed to "hold" the liquid for a significant period of time, but rather to pump the liquid immediately as it accumulated. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question.
11. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
12. Complainant agrees with this statement. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question
13. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
14. Complainant agrees with this statement. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question
15. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
16. Objection. The question calls for a legal conclusion, and/or requests

Complainant's work product.

17. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
18. Complainant agrees with this statement. By agreeing as to details concerning the physical appearance and design of the equipment, Complainant is not agreeing as to any regulatory interpretation hidden in Respondent's question
19. Objection. The question calls for a legal conclusion, and/or requests Complainant's work product. Moreover, this is irrelevant because neither the Complaint nor Answer has alleged that any portion of the facility is "ancillary equipment".
20. As it now stands, the Complaint appears to be restricted to the issue of whether Respondent has violated the storage time requirements for hazardous waste under the catwalk. Under these circumstances, the Complainant will testify as to the properties of the material under the catwalk, and as to the length of storage. In the event Respondent intends to offer testimony to the effect that the area is periodically cleaned, or that the material is not hazardous waste, Complainant will request subpoenas to obtain testimony of employees and former employees, including Larry Kelly, Afiba Martin and Holly Hirschert.
21. Complainant has no funds with which to employ outside expert witnesses. Complainant sees no need at this time for expert testimony. Complainant is, however, an expert on much of the factual material at issue, and will, if necessary, testify as an expert witness. In a citizen enforcement action, the Complainant has a right to testify about relevant matters at a public hearing regardless of qualification as an expert. Any objections would go to the weight of the evidence. Complainant's relevant qualifications include:
 - a. Bachelor of Science in Chemistry, with high honors and distinction in the curriculum, University of Illinois, Urbana, Illinois, 1970. Juris Doctor, 1976.
 - b. Between 1980 and 1993, Complainant drafted the Illinois versions of most of the regulations involved in this case.
 - c. Between 1980 and 1993, Complainant handled public questions concerning these regulations for the State of Illinois.
 - d. Complainant attended numerous conferences and hearings concerning the subject of hazardous waste management, both as an attendee and speaker.

- e. Complainant drafted numerous documents and reports concerning hazardous waste, including the Annual Reports to the Governor of the Illinois Hazardous Waste Advisory Council.
- f. Complainant is a certified "HAZWOPER" first responder for hazardous waste emergencies.
- g. Complainant did process and quality control chemistry for the subject plating line for nearly two years, during which time he was regularly consulted by management concerning the operation and control of the plating process.

22. Other persons:

- a. Tanvir Ali, Plant Manager, Guardian West, 601 Guardian Drive, Urbana IL 61802
- b. Ken Keigley, Illinois Environmental Protection Agency, 2125 South First Champaign IL
- c. Holly Hirschert, Illinois Environmental Protection Agency, 2125 South First Champaign IL
- d. Bill Keller, Champaign County Emergency Services and Disaster Agency, 1905 East Main Urbana IL 61802
- e. Unknown person, Urbana Fire Department, 400 S. Vine, Urbana, IL 61801
- f. Peggy A. Zweber, Area Director, U.S. Dept. of Labor, Occupational Safety and Health Administration, 2918 Willows Knolls Rd, Peoria IL 61614.
- g. Brian Bothast, Acting Area Director, U.S. Dept. of Labor, Occupational Safety and Health Administration, 2918 Willows Knolls Rd, Peoria IL 61614.
- h. Sue Ellen DeManche, U.S. Dept. of Labor, Occupational Safety and Health Administration, 2918 Willows Knolls Rd, Peoria IL 61614.
- i. Mr. Thomas V. Skinner, Regional Administrator, US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604
- j. Gary Westefer, US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604

23. No persons have assisted Complainant.
24. Complainant has claimed privilege in response to several of the above questions.

Morton F. Dorothy
Morton F. Dorothy, Complainant

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THIRD INTERROGATORIES

Pursuant to leave granted by the Hearing Officer, Complainant Morton F. Dorothy requests that Respondent Flex-N-Gate Corporation answer the following interrogatories within 30 days after the date of this request:

1. On August 5, 2004, was sludge present on the floor under the plating line catwalk? As used in this question, "sludge" means any solid or semi-solid material, including precipitated nickel salts, barium sulfate and activated carbon.
2. On August 5, 2004, was debris present on the floor under the plating line catwalk? As used in this question, "debris" includes blocks of wood, rags, items of clothing, food packaging and beverage containers.
3. Did the sludge and debris interfere with the flow of liquid to the pits?
4. Prior to August 5, 2004, when was the last time the floor under the plating line catwalk was cleared of sludge and debris, as those terms are defined above?
5. What records does Respondent maintain to show the clearing of the floor under the plating catwalk?
6. Did Respondent have a written procedure and schedule for clearing the floor under the plating catwalk?
7. Was chromic acid routinely spilled onto the floor under the plating catwalk during operation and maintenance of the plating line?
8. Was chromic acid spilled onto the floor under the plating catwalk during operation, repair and maintenance of the chromic acid recovery unit?

9. Describe the procedures Respondent used to dispose of chromic acid containers after use.
10. Describe the procedures followed by Respondent with respect to chromic acid contaminated wastes.

Morton F. Dorothy

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