

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MORTON F. DOROTHY,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-49
)	
FLEX-N-GATE CORPORATION,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **SUBSTITUTION OF AFFIDAVITS**, a copy of which is herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: June 23, 2006

By: /s/ Thomas G. Safley
One of Its Attorneys

Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, certify that I have served the attached

SUBSTITUTION OF AFFIDAVITS upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Via electronic mail on June 21, 2006; and upon:

Mr. Morton F. Dorothy
104 West University, SW Suite
Urbana, Illinois 61801

by depositing said documents in the United States Mail in Springfield, Illinois, postage prepaid, on June 23, 2006.

/s/ Thomas G. Safley
Thomas G. Safley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MORTON F. DOROTHY,)	
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)	
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SUBSTITUTION OF AFFIDAVITS

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"), by and through its attorneys, HODGE DWYER ZEMAN, and files the attached original Affidavit of Kevin Jeffries and original Affidavit of Anthony Rice to replace the copies of said Affidavits that were attached as Exhibits to Flex-N-Gate's Motion for Sanctions or, in the Alternative, for Summary Judgment.

Respectfully submitted,

FLEX-N-GATE CORPORATION
Respondent,

Dated: June 23, 2006

By: /s/ Thomas G. Safley
One of Its Attorneys

Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

GWST:003/Fil/Substitution of Affidavits – Motion for Sanctions

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

MORTON F. DOROTHY,)	
)	
Complainant,)	
)	
v.)	PCB 05-49
)	
FLEX-N-GATE CORPORATION,)	
an Illinois corporation,)	
)	
Respondent.)	

AFFIDAVIT OF KEVIN JEFFRIES

Kevin Jeffries, being first duly sworn, deposes and states under oath, and if sworn as a witness, would testify, as follows:

1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed as Environmental Director for Flex-N-Gate Corporation ("Flex-N-Gate").
3. The electroplating line at the facility at issue in this matter ("Facility"), as described on pages 18 and 19 of Flex-N-Gate's Motion for Sanctions or, in the Alternative, for Summary Judgment ("Motion for Sanctions"), is a standard design for plating operations.
4. The table set forth at pages 20 and 21 of Flex-N-Gate's Motion for Sanctions accurately describes the pieces of equipment involved in treating wastewater at the Facility as of August 2004, the material out of which such equipment is/was constructed, and the purpose of each piece of equipment, in the order that wastewater enters each piece of equipment.

5. The sludge dryer referenced in that table was removed from the Facility in March 2005.

6. All of this equipment (hereinafter "Wastewater Treatment Equipment") is located on-site, within the boundaries of the Facility.

7. The diagram attached to Flex-N-Gate's Motion for Sanctions as Exhibit H roughly illustrates the layout of the wastewater treatment system.

8. Following treatment in the Wastewater Treatment Equipment, liquids are discharged to a Publicly Owned Treatment Works ("POTW") operated by the Cities of Champaign and Urbana, Illinois ("UCSD").

9. 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.

10. The document attached to Flex-N-Gate's Motion for Sanctions as Exhibit I is a true and accurate copy of a manifest by which Flex-N-Gate has had such sludge transported off-site recycling.

11. While the wastewater treatment sludge is located inside the equipment that is used to treat the Facility's wastewater, Flex-N-Gate considers the sludge to be exempt from RCRA pursuant to 35 Ill. Admin. Code § 703.123(e).

12. The wastewater that the Facility treats and discharges to the UCSD includes wastewater from the Plating Room floor.

13. Flex-N-Gate discharges to the UCSD pursuant to an authorization that UCSD issued to Flex-N-Gate, a copy of which authorization is attached to Flex-N-Gate's Motion for Sanctions as Exhibit K.

14. The sludge that the Facility's Wastewater Treatment Equipment generates is a hazardous waste as defined in 35 Ill. Admin. Code § 721.103.

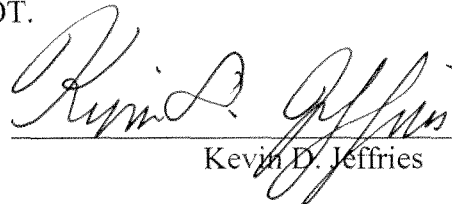
15. The Facility's wastewater treatment sludge "has not been excluded from the lists in Subpart D of this Part under 35 Ill. Adm. Code 720.120 and 720.122."

16. This Facility's Wastewater Treatment Equipment:

- (a) is stationary;
- (b) is "designed to contain an accumulation of hazardous waste," i.e., the F006 sludge that the treatment of the wastewater creates;
- (c) is "constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic)," in this case, Fiberglass Reinforced Plastic and steel; and,
- (d) these "nonearthen materials . . . provide structural support."

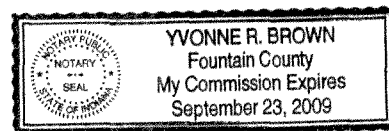
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.


Kevin D. Jeffries

Subscribed and sworn to before
me this 16th day of JUNE, 2006.


Notary Public



GWST:003/Fil/Affidavit of Kevin Jeffries – Motion for Sanctions

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

MORTON F. DOROTHY,)	
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Complainant,)	
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v.)	PCB 05-49
)	
FLEX-N-GATE CORPORATION,)	
an Illinois corporation,)	
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Respondent.)	

AFFIDAVIT OF ANTHONY RICE

Anthony Rice, being first duly sworn, deposes and states under oath, and if sworn as a witness, would testify, as follows:

1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by Flex-N-Gate Corporation ("Flex-N-Gate") as Plating Manager at the facility at issue in the above-captioned matter.
3. The diagram attached to Flex-N-Gate's Motion for Sanctions or, in the Alternative, for Summary Judgment ("Motion for Sanctions"), as Exhibit E roughly illustrates the layout of the Electroplating Line at the Facility.
4. The tanks that make up the Electroplating Line are mounted on concrete piers above a sloped, coated concrete floor.
5. During the process of cleaning, plating, and rinsing, the bumpers are dipped into the first tank, raised up, moved into position above the next tank, dipped into that tank, etc.
6. When a bumper is removed from a tank, some amount of the solution which that tank contains remains on the bumper.

7. The Electroplating Line is engineered so that when bumpers are being moved from tank to tank, the solution that remains on the bumpers after removal from a tank may fall from the bumpers and land on the floor of the room in which the Line is located (hereinafter "Plating Room").

8. This process is intentional.

9. The floor of the Plating Room is coated with epoxy and is sloped towards the center of the room, where two concrete "pits" are located in the floor.

10. The purpose of the slope of the floor is to direct the solution which falls from the bumpers and lands on the floor into the "pits" in the center of the floor.

11. The purpose of the coating on the floor is to make the floor impervious to the materials that fall on it so that such materials are directed into the "pits" rather than soaking into the floor.

12. At least part of the floor is hosed down each shift in order to wash any material that has fallen onto the floor into the "pits."

13. A pump is located at each "pit," which pumps are used to transfer solution that falls onto the floor into piping which leads to equipment in which wastewater from the Facility is treated.

14. These pumps do not run continuously.

15. Rather, a level indicator in each pit automatically actuates each pump when the material in the pit reaches a pre-determined level.

16. This normally occurs several times each day.

17. Thus, the longest period of time that material which falls to the floor would remain in the pit normally would be a few hours.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

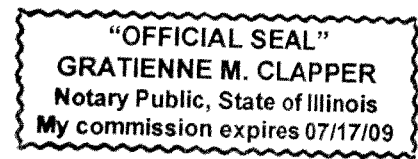


Anthony Rice

Subscribed and sworn to before
me, this 19 day of June, 2006.



Notary Public



GWST:003/Fil/Affidavit of Anthony Rice – Motion for Sanctions