

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 the **RENEWAL OF RESPONDENT'S PREVIOUSLY FILED MOTION FOR SUMMARY JUDGMENT**, a copy of which is herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: December 26, 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

CERTIFICATE OF SERVICE

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

RENEWAL OF RESPONDENT'S PREVIOUSLY FILED MOTION FOR SUMMARY

JUDGMENT 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 December 26, 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 December 26, 2006.

/s/ Thomas G. Safley
Thomas G. Safley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FLEX-N-GATE CORPORATION,)	
an Illinois corporation,)	
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RENEWAL OF RESPONDENT'S PREVIOUSLY FILED MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"), by and through its attorneys, HODGE DWYER ZEMAN, pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.516, and for its Renewal of Respondent's Previously Filed Motion for Summary Judgment, states as follows:

1. Pursuant to the Illinois Pollution Control Board's ("Board") October 20, 2005 Order in this matter, Flex-N-Gate filed an Amended Answer stating as an Affirmative Defense that its management of hazardous waste is exempt from permitting requirements.

2. On June 19, 2006, Flex-N-Gate filed its Motion for Sanctions or, in the Alternative, Summary Judgment on its Affirmative Defense ("Motion for Sanctions"). Subsequent to the filing of that Motion, Complainant expressed a desire to amend his Complaint.

3. On August 29, 2006, the Hearing Officer granted Complainant time in which to request leave of the Board to amend his Complaint.

4. Pursuant to the Hearing Officer's August 29, 2006 Order, Complainant's proposed Amended Complaint and Motion for Leave to file the same were due on or before September 19, 2006.

5. On September 19, 2006, Complainant filed a document purporting to be his Amended Complaint but failed to request leave of the Board to file an Amended Complaint. Flex-N-Gate filed its response to Complainant's document on October 3, 2006, stating the same.

6. The Board ruled on Flex-N-Gate's Motion for Sanctions on November 2, 2006, issuing an Order limiting Complainant to amending Count I of his originally filed Complaint. The Board stated that its proscriptive ruling was intended as a sanction, in response to Flex-N-Gate's Motion for Sanctions, for Complainant's failure to comply with procedural rules thus resulting in repeated delays.

7. Further, in its November 2, 2006 Order, the Board granted Complainant time within which to move for leave to amend Count I of his Complaint. At the Board's direction, the deadline for any such Motion was December 4, 2006.

8. Complainant has failed to file any motion for leave to amend his Complaint within the time afforded him by the Board.

9. Likewise, despite the requirement of 35 Ill. Admin. Code § 101.500(d), Complainant failed to respond to Flex-N-Gate's Motion for Sanctions within 14 days of its filing.

10. It is Flex-N-Gate's understanding based on the Board's November 2, 2006 Order, that the Board declined to rule on Flex-N-Gate's Alternative Motion for Summary

Judgment solely because it was granting Complainant time in which to move for leave to amend Count I of his Complaint.

11. The Board further stated, however, that “if no amended complaint is filed” by Complainant, Flex-N-Gate “may renew its motion for summary judgment or make any other appropriate motion.” Board November 2, 2006 Order at 12.

WHEREFORE, Respondent FLEX-N-GATE CORPORATION, by its attorneys HODGE DWYER ZEMAN, hereby renews its Alternative Motion for Summary Judgment as to its Affirmative Defense and moves the Illinois Pollution Control Board to grant FLEX-N-GATE CORPORATION summary judgment on its Affirmative Defense, and to award FLEX-N-GATE CORPORATION all other relief just and proper in the premises.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: December 26, 2006

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

Thomas G. Safley
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GWST:003/Fil/Renewal of Summary Judgment Motion