

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 03 2005

STATE OF 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
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

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

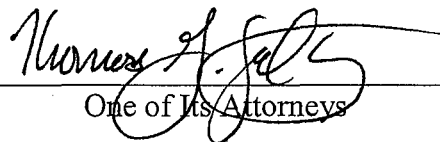
PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of a **SUBSTITUTION OF AFFIDAVITS**, a copy of which is herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: June 1, 2005

By:


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

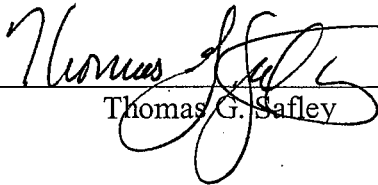
SUBSTITUTION OF AFFIDAVITS upon:

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

Mr. Morton F. Dorothy
804 East Main
Urbana, Illinois 61802

by depositing said documents in the United States Mail in Springfield, Illinois, postage prepaid, on June 1, 2005.



Thomas G. Safley

GWST:003/Fil/NOF and COS – Substitution3

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MORTON F. DOROTHY,

Complainant,

v.

FLEX-N-GATE CORPORATION,
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Respondent.

PCB 05-49

SUBSTITUTION OF AFFIDAVITS

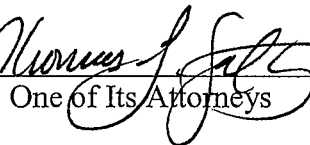
NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"),
by and through its attorneys, HODGE DWYER ZEMAN, and files the attached original
Affidavit of Jackie Christensen, original Affidavit of Anthony Rice, and original
Affidavit of Denny Corbett to replace the facsimile copies of said Affidavits that were
attached as Exhibits to Flex-N-Gate's Motion for Partial Summary Judgment as to Counts
II through VI Of Complainant's Complaint and Motion for Summary Judgment as to All
Counts of Complainant's Complaint.

Respectfully submitted,

FLEX-N-GATE CORPORATION
Respondent,

Dated: June 1, 2005

By:


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 Affidavits3

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

MORTON F. DOROTHY,

Complainant,

v.

FLEX-N-GATE CORPORATION,
an Illinois corporation,

Respondent.

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JUN 03 2005
DEC 05-19
STATE OF ILLINOIS
Pollution Control Board

AFFIDAVIT OF JACKIE CHRISTENSEN

Jackie Christensen, 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 Environmental Manager at the facility at issue in the above-captioned matter.
3. True and accurate copies of portions of Flex-N-Gate's Facility Emergency Response and Contingency Plan ("Plan") are attached to Flex-N-Gate's Motion for Partial Summary Judgment as Exhibit D.
4. The Plan was developed by Flex-N-Gate to address numerous types of situations that could occur at the Facility, including, but not limited to, situations involving "hazardous waste."
5. Thus, portions of the Facility's "Emergency Response and Contingency Plan" serve as:
 - the Facility's "Contingency Plan" under Subpart D to 35 Ill. Adm. Code Part 725;

- the Facility's "Emergency Response Plan" under the Occupational Safety and Health Act (29 C.F.R. § 1910.120(p)(8)(i));

and set out other procedures for the Facility relating to maintenance, security, etc.

6. Section 6 of the Plan is not focused on "hazardous waste," but rather, is titled "Hazardous Material Spills," and addresses any type of hazardous substance at the Facility, be it a waste or a product.

7. Flex-N-Gate included its RCRA contingency plan within its OSHA emergency response plan; this is why the Facility's Plan is titled "Emergency Response and Contingency Plan."

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.

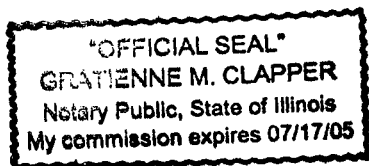
FURTHER AFFIANT SAYETH NOT.

Jackie Christensen
Jackie Christensen

Subscribed and sworn to before
me this 27 day of May, 2005.

Gratienna M. Clapper
Notary Public

GWST:003/Fil/Affidavit of Jackie Christensen – Partial MSJ



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CHAMPAIGN COUNTY, ILLINOIS

JUN 03 2005
MORTON ILLINOIS
Pollution Control Board

)	
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Complainant,)	
)	
v.)	PCB 05-49
)	
FLEX-N-GATE CORPORATION,)	
an Illinois corporation,)	
)	
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 Summary Judgment as to All Counts of Complainant's Complaint ("Motion for Complete Summary Judgment") as Exhibit A 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.

18. The Facility stores approximately 93% concentrated sulfuric acid in a bulk storage tank which is located in a different room at the Facility than the Plating Room.

19. Several pipes lead from this bulk storage tank to various other tanks at the Facility, including a pipe that leads from the bulk storage tank directly to Tank No. 8 in the Plating Room, which tank is part of the Electroplating Line.

20. Tank No. 8 is an open-top tank and contains a solution of approximately 10% sulfuric acid and 90% water.

21. Sulfuric acid is transferred from bulk storage to Tank No. 8 by means of a pump that is located at the bulk storage tank, which pump is controlled by a button located adjacent to Tank No. 8.

22. Near Tank No. 8, the pipe from bulk storage approaches Tank No. 8 traveling horizontally at a level lower than the top of the tank (pipe segment 1), then travels vertically to a level higher than the top of the tank (pipe segment 2), then travels horizontally to a position over the top of the tank (pipe segment 3), then descends vertically into the top of the tank (pipe segment 4).

23. A valve is located in pipe segment 2, which valve must be opened to allow material to be pumped from bulk storage to Tank No. 8.

24. A fitting is located above this valve.

25. The diagram attached to Flex-N-Gate's Motion for Complete Summary Judgment as Exhibit F roughly illustrates the arrangement of this pipe, the "pipe segments" noted above, and the location of the valve and fitting.

26. On August 5, 2004, the pipe from bulk storage to Tank No. 8 separated at the fitting located above the valve in the vertical portion of the pipe that is outside the tank, i.e., in pipe segment 2.

27. Flex-N-Gate has since determined that this separation occurred because improper adhesive had been used to join the pipe to the fitting.

28. The separation was not caused by a fire or explosion; the separation did not cause a fire or explosion; and no fire or explosion otherwise occurred in connection with the separation.

29. The separation allowed a small quantity of sulfuric acid that was in the portion of pipe segment 2 above the fitting, and potentially sulfuric acid contained in pipe segments 3 and 4, to be released to the Plating Room floor.

30. In addition, back siphoning could have occurred in this situation, which could have allowed some amount of the approximately 10% sulfuric acid solution contained in Tank No. 8 to be released to the floor as well.

31. However, an examination of Tank No. 8 after the pipe separation indicated that at most a small amount of solution from Tank No. 8 was back-siphoned and released to the floor.

32. At one time, a "day tank" was located in the Plating Room and used as Complainant describes in his Complaint.

33. Flex-N-Gate stopped using the day tank in this manner and re-plumbed the system to the arrangement described in Flex-N-Gate's Motion for Complete Summary Judgment in December 2001, more than 2 1/2 years before the separation of the pipe on August 5, 2004.

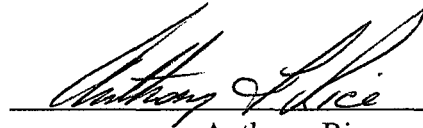
34. On August 5, 2004, the day tank, while still present in the Plating Room (it since has been removed completely) did not contain any substance of any kind, and the separation of the pipe did not "empt[y] the day tank," as Complainant alleges in paragraph 11 of Count VI of his Complaint.

35. The pump that is used to transfer sulfuric acid from bulk storage to Tank No. 8 was not operating when the pipe separated.

36. Thus, sulfuric acid was not pumped from bulk storage through the separation in the pipe and onto the floor.

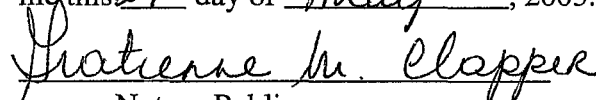
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

FURTHER AFFIANT SAYETH NOT.



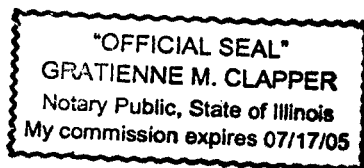
Anthony Rice

Subscribed and sworn to before
me this 27 day of May, 2005.



Notary Public

GWST:003/Fil/Affidavit of Anthony Rice – Complete MSJ



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Respondent.

PCB 05-49


AFFIDAVIT OF DENNY CORBETT

Denny Corbett, 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 Corporate Safety Director for Flex-N-Gate Corporation ("Flex-N-Gate").
3. On August 5, 2004, a pipe in the Facility that carries a solution of approximately 93% concentrated sulfuric acid/ 7% water separated at a fitting, and a small amount of acid drained out from the pipe onto the floor of a room inside the Facility.
4. No fire occurred at the Facility on August 5, 2004.
5. No explosion occurred at the Facility on August 5, 2004.

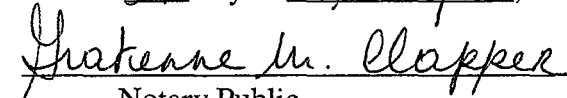
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

FURTHER AFFIANT SAYETH NOT.



Denny Corbett

Subscribed and sworn to before
me this 27 day of May, 2005.



Notary Public

GWST:003/Fil/Affidavit of Denny Corbett – Partial MSJ

