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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR - 7 2005

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

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-49

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)

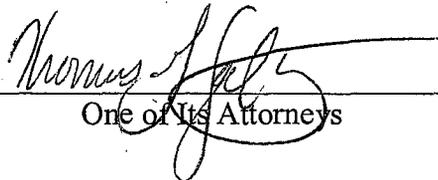
Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274
(VIA FIRST CLASS MAIL)

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 **RESPONDENT FLEX-N-GATE CORPORATION'S ANSWER TO COMPLAINANT'S COMPLAINT**, a copy of which is herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: March 4, 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

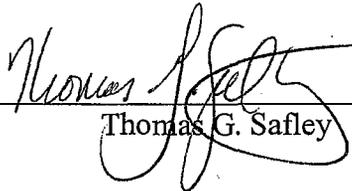
I, Thomas G. Safley, the undersigned, certify that I have served the attached
RESPONDENT FLEX-N-GATE CORPORATION'S ANSWER TO
COMPLAINANT'S COMPLAINT upon:

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 March 4, 2005.


Thomas G. Safley

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

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

**RESPONDENT FLEX-N-GATE
CORPORATION'S ANSWER TO COMPLAINANT'S COMPLAINT**

NOW COMES Respondent FLEX-N-GATE CORPORATION ("Flex-N-Gate"),
by its attorneys HODGE DWYER ZEMAN, and for its Answer to Complainant's
Complaint, states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Paragraph one of Complainant's Complaint states a legal conclusion that
does not call for a response. To the extent that paragraph one makes any allegations of
fact, Flex-N-Gate denies the same.

2. Flex-N-Gate has insufficient knowledge to either admit or deny the
allegations of paragraph two of Complainant's Complaint, and therefore denies the same.

3. Flex-N-Gate admits the allegations of paragraph three of Complainant's
Complaint.

4. Flex-N-Gate admits the allegations of paragraph four of Complainant's
Complaint.

5. Flex-N-Gate admits the allegations of paragraph five of Complainant's
Complaint.

6. Flex-N-Gate admits the allegation of the first sentence of paragraph six of Complainant's Complaint that "[t]he tanks are mounted on concrete piers above a coated concrete floor." Flex-N-Gate denies the allegations of the second sentence of paragraph six of Complainant's Complaint. In particular, Flex-N-Gate denies that any "chemicals" which "fall to the floor" of the room in which the "chrome plating line" (identified in paragraph four of Complainant's Complaint) is located are "spilled" and then "pumped to a hazardous waste treatment unit." Rather, Flex-N-Gate affirmatively states that the chrome plating line is engineered so that substances will fall from the bumpers at issue during the process of cleaning, plating, and rinsing, and land on the floor of the room in which that line is located, which floor constitutes part of a Wastewater Treatment Unit as defined in 35 Ill. Admin. Code § 703.110, not a "hazardous waste treatment unit." This process is intentional, and thus does not constitute "spillage." To the extent that paragraph six of Complainant's Complaint states any other allegations of fact, Flex-N-Gate denies the same.

7. Flex-N-Gate denies that any "spillage" is located "on the floor" as alleged in paragraph seven of Complainant's Complaint. See Answer to paragraph six above. Further, paragraph seven of Complainant's Complaint states a legal conclusion that does not call for a response. To the extent that paragraph seven of Complainant's Complaint makes any allegations of fact, Flex-N-Gate denies the same.

8. Flex-N-Gate denies that any "spillage" is located "on the floor" as alleged in paragraph eight of Complainant's Complaint. See Answer to paragraph six above. Flex-N-Gate does not know what Complainant means by the term "complex mixture,"

and therefore has insufficient knowledge to admit or deny this allegation, and therefore denies the same. Flex-N-Gate admits that “chromic acid, nickel sulfate from the nickel plating tanks[, and] sulfuric acid,” as well as cleaners and large amounts of water, could, at various times, be present on the floor of the room in which the “chrome plating line” is located. Flex-N-Gate further admits that one “proprietary . . . additive[] used in one of the nickel plating tanks to form a . . . corrosion resistant nickel layer” could, at various times, be present on the floor of the room in which the “chrome plating line” is located. Flex-N-Gate further admits that this proprietary additive contains approximately .15% sulfur. To the extent that paragraph eight of Complainant’s Complaint makes any further allegations of fact, Flex-N-Gate denies the same.

9. Flex-N-Gate denies that any “spillage” is located “on the floor” as alleged in paragraph nine of Complainant’s Complaint. See Answer to paragraph six above. Further, Flex-N-Gate does not know what Complainant means by the terms “contaminated debris and sludge beds.” Accordingly, Flex-N-Gate has insufficient knowledge to either admit or deny the allegations of paragraph nine of Complainant’s Complaint, and therefore denies the same.

10. Flex-N-Gate denies that “the facility includes a hazardous waste treatment unit,” as alleged in paragraph ten of Complainant’s Complaint, but Flex-N-Gate admits that “the facility” includes a Wastewater Treatment Unit as defined in 35 Ill. Admin. Code § 703.110. Flex-N-Gate further denies that the Wastewater Treatment Unit conducts “reduction of hexavalent chromium with sodium metabisulfite,” but rather, affirmatively states that it conducts reduction of hexavalent chromium with magnesium

bisulfite. Flex-N-Gate admits the remaining allegations of paragraph ten of Complainant's Complaint.

11. Flex-N-Gate admits the allegations of paragraph 11 of Complainant's Complaint.

12. Flex-N-Gate denies the allegation contained in the first sentence of paragraph 12 of Complainant's Complaint. The remainder of paragraph 12 states legal conclusions that do not call for a response. To the extent that paragraph 12 states any further allegations of fact, Flex-N-Gate denies the same.

13. Flex-N-Gate admits the allegations of paragraph 13 of Complainant's Complaint.

14. In response to paragraph 14 of Complainant's Complaint, Flex-N-Gate states as follows. The facility stores approximately 93% concentrated sulfuric acid in a "bulk storage" tank. Several pipes lead from this bulk storage tank to various other tanks at the facility, including a pipe that leads to Tank No. 8, which is part of the "chrome plating line" and contains a solution of approximately 10% sulfuric acid and 90% water. Near Tank No. 8, this pipe approaches that tank 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). On August 5, 2004, this pipe separated at a fitting that is located in the vertical portion of the pipe that is outside the tank, i.e., in pipe segment 2. This allowed a small quantity of sulfuric acid that was in the portion of pipe segment 2 above the location of this fitting,

and potentially sulfuric acid contained in pipe segments 3 and 4, to be released to the floor of the room in which the chrome plating line was located. In addition, back siphoning could have occurred in this situation, which would have allowed some amount of the approximately 10% sulfuric acid solution contained in Tank No. 8 to be released to the floor as well. Sulfuric acid is transferred from bulk storage to Tank No. 8 by use of a pump that is located at the bulk storage tank, which pump is controlled by a button located adjacent to Tank No. 8. A valve is located in pipe segment 2, below the fitting that separated, which valve must be opened to allow material to be pumped from bulk storage to Tank No. 8. The pump was not operating at the time of the separation in the pipe. Thus, sulfuric acid was not pumped from bulk storage through the separation in the pipe and onto the floor. To the extent that paragraph 14 of Complainant's Complaint states any further factual allegations, Flex-N-Gate denies the same.

15. Flex-N-Gate denies the allegations of paragraph 15 of Complainant's Complaint.

16. Flex-N-Gate admits the allegation contained in the first sentence of paragraph 16. Flex-N-Gate states that the regulations quoted and cited in the second and fourth sentences of paragraph 16 speak for themselves, and therefore, Flex-N-Gate makes no response to these statements. Flex-N-Gate has insufficient information to either admit or deny the allegation contained in the third sentence of paragraph 16, and therefore denies the same. To the extent that paragraph 16 states any further allegations of fact, Flex-N-Gate denies the same.

17. The regulation quoted in paragraph 17 of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph 17 states any allegations of fact, Flex-N-Gate denies the same.

18. Paragraph 18 of Complainant's Complaint states a conclusion of law which does not call for a response. To the extent that paragraph 18 states any allegations of fact, Flex-N-Gate denies the same.

19. Paragraph 19 of Complainant's Complaint states a conclusion of law which does not call for a response. To the extent that paragraph 19 states any allegations of fact, Flex-N-Gate denies the same.

20. Flex-N-Gate admits the allegations of paragraph 20 of Complainant's Complaint.

21. Flex-N-Gate admits the allegations of paragraph 21 of Complainant's Complaint as they relate to solution attendants and lab technicians at the facility. Flex-N-Gate does not know what Complainant means by the term "line worker," as the facility has no such position. Accordingly, Flex-N-Gate has insufficient information to either admit or deny the allegations of paragraph 21 of Complainant's Complaint as they relate to "line workers," and therefore denies the same. Flex-N-Gate denies any further factual allegations of paragraph 21.

22. Flex-N-Gate denies that "the hazwoper-trained line workers" "determin[ed] that a hydrogen sulfide release was occurring," as alleged in paragraph 22 of Complainant's Complaint. Flex-N-Gate does not know what Complainant means by his allegation that "[a]fter discovering the acid spill . . . the hazwoper-trained line

workers began an immediate response,” and therefore has insufficient information to either admit or deny this allegation, and denies the same. Flex-N-Gate admits that “[a]fter discovering the acid spill” an employee at the facility “paged safety.” To the extent that paragraph 22 of Complainant’s Complaint makes any further factual allegations, Flex-N-Gate denies the same.

23. In response to paragraph 23 of Complainant’s Complaint, Flex-N-Gate states that it does not know what Complainant means by the term “line workers,” and therefore has insufficient information to admit or deny the allegations of paragraph 23 to the extent they relate to “line workers,” and denies the same. Flex-N-Gate admits that when the facility safety officer on duty at the time of the separation of the pipe leading to Tank No. 8 arrived at the location of that tank after being paged, Complainant explained to that safety officer that the pipe had separated, expressed Complainant’s opinion that the release of sulfuric acid had created hydrogen sulfide gas, and “requested that [the safety officer] get a hydrogen sulfide probe.” Flex-N-Gate has insufficient knowledge as to why Complainant made this request, whether “to determine whether the levels [presumably of the alleged hydrogen sulfide] were safe” or otherwise, and can neither admit nor deny that Complainant made this request “to determine whether the levels were safe,” and therefore denies this allegation. To the extent that paragraph twenty-three of Complainant’s Complaint states any further allegations of fact, Flex-N-Gate denies the same.

24. In response to paragraph 24 of Complainant’s Complaint, Flex-N-Gate states that it does not know what Complainant means by the term “line workers,” and

therefore has insufficient information to admit or deny the allegations of paragraph 24 to the extent they relate to “line workers,” and therefore denies the same. Flex-N-Gate further denies that the facility safety officer on duty at the time of the separation of the pipe “responded that he did not know what a hydrogen sulfide probe was,” but admits that the facility safety officer did at that time state to Complainant that he “did not know whether [such a probe] was present at the facility.” To the extent that paragraph 24 states any other allegations of fact, Flex-N-Gate denies the same.

25. In response to paragraph 25 of Complainant’s Complaint, Flex-N-Gate states that it does not know what Complainant means by the term “line workers,” and therefore has insufficient information to admit or deny the allegations of paragraph 25 to the extent they relate to “line workers,” and therefore denies the same. Flex-N-Gate admits that Respondent “told [the facility safety officer on duty at the time of the separation of the pipe] that hydrogen sulfide was a toxic gas, that the Urbana Fire Department had a hydrogen sulfide probe, and that safety” should consider evacuating the facility. Flex-N-Gate further admits that the safety officer contacted the plating department manager regarding the issue and also told all employees in the room of the facility in which the chrome plating line is located to leave the room. Flex-N-Gate further states that the safety officer on duty at the time of the separation of the pipe has no recollection of the discussion that Complainant alleges regarding fans, and therefore, Flex-N-Gate has insufficient information to admit or deny Complainant’s allegations regarding such discussion, and denies the same. Flex-N-Gate further has insufficient information regarding whether “[s]afety then departed and was not seen again by the first

responders for the remainder of the immediate response,” because (a) Flex-N-Gate does not know what Complainant means by the term “first responders,” (b) Flex-N-Gate has no knowledge as to what the “first responders,” Complainant, or any other person allegedly saw or did not see, and (c) Flex-N-Gate does not know what Complainant means by the term “remainder of the immediate response.” Therefore, Flex-N-Gate denies the allegations of the last sentence of paragraph twenty-five of Complainant’s Complaint. To the extent that paragraph twenty-five of Complainant’s Complaint states any other allegations of fact, Flex-N-Gate denies the same.

26. In response to paragraph 26 of Complainant’s Complaint, Flex-N-Gate admits that employees “directed water hoses” onto the floor of the room in which the “chrome plating line” is contained. Flex-N-Gate further admits that after doing so, those employees left that room. Flex-N-Gate further admits that the water “diluted the acid” and any other substance on the floor of the room. Flex-N-Gate denies that the water “washed” any material “to the hazardous waste treatment unit”; as noted above, the floor of the room constitutes part of a Wastewater Treatment Unit as defined in 35 Ill. Admin. Code § 703.110. Flex-N-Gate does admit that the water would have washed any material on the floor further into pipes and tanks that also make up the Wastewater Treatment Unit. To the extent that paragraph 26 states any further allegations of fact, Flex-N-Gate denies the same.

27. In response to paragraph 27 of Complainant’s Complaint, Flex-N-Gate states that it does not know what Complainant means by the terms “line worker” or “release.” Flex-N-Gate does admit that after the separation of the pipe and leak of

sulfuric acid onto the floor, at least one employee reported to the facility safety officer that he felt ill. To the extent that paragraph 27 of Complainant's Complaint states any further allegations of fact, Flex-N-Gate denies the same.

COUNT I

OPERATION WITHOUT A RCRA PERMIT OR INTERIM STATUS

Flex-N-Gate reincorporates and realleges its responses to Complainant's Allegations Common to All Counts in response to Count I of Complainant's Complaint.

1. Flex-N-Gate denies the allegations of paragraph one of Count I of Complainant's Complaint.
2. Flex-N-Gate denies the allegations of paragraph two of Count I of Complainant's Complaint.
3. The statutory section cited in paragraph three of Count I of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph three of Count I of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.
4. The regulations cited in paragraph four of Count I of Complainant's Complaint speak for themselves, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph four of Count I of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, prays that the Illinois Pollution Control Board find against Complainant on Count I of his Complaint,

that Complainant take nothing by way of Count I his Complaint, and that the Illinois Pollution Control Board grant Flex-N-Gate all relief just and proper in the premises.

COUNT II

**FAILURE TO CARRY OUT
CONTINGENCY PLAN AS REQUIRED BY SECTION 725.151**

Flex-N-Gate reincorporates and realleges its responses to Complainant's Allegations Common to All Counts in response to Count II of Complainant's Complaint.

1. The regulation cited in paragraph one of Count II of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph one of Count II of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

2. Flex-N-Gate denies that any "hydrogen sulfide emission" occurred at the facility as alleged in paragraph two of Count II of Complainant's Complaint, and further denies all other allegations of paragraph two of Count II of Complainant's Complaint.

3. In response to paragraph three of Count II of Complainant's Complaint, Flex-N-Gate states that it does not know what Complainant means by the term "incident." If Complainant means an alleged "hydrogen sulfide emission," Flex-N-Gate denies that any such emission occurred at the facility. If Complainant means the release of sulfuric acid, Flex-N-Gate denies that it had any obligation to "carry out the contingency plan in response to this" release, as Complainant alleges. Flex-N-Gate further denies that it in any way acted inappropriately, or failed to act as necessary, "in response to this" release. To the extent that paragraph three of Count II of Complainant's Complaint states any further allegations of fact, Flex-N-Gate denies the same.

4. In response to paragraph four of Count II of Complainant's Complaint, Flex-N-Gate denies that it had any obligation to take any of the actions identified by Complainant, and, therefore, denies that it "failed to" take such actions. To the extent that paragraph four of Count II of Complainant's Complaint states any further allegations of fact, Flex-N-Gate denies the same.

5. Flex-N-Gate denies the allegations of paragraph five of Count II of Complainant's Complaint.

6. The statutory section cited in paragraph six of Count II of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph six of Count II of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, prays that the Illinois Pollution Control Board find against Complainant on Count II of his Complaint, that Complainant take nothing by way of Count II his Complaint, and that the Illinois Pollution Control Board grant Flex-N-Gate all relief just and proper in the premises.

COUNT III

FAILURE TO NOTIFY ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Flex-N-Gate reincorporates and realleges its responses to Complainant's Allegations Common to All Counts in response to Count III of Complainant's Complaint.

1. The regulation cited in paragraph one of Count III of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this

allegation. To the extent that paragraph one of Count III of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

2. In response to paragraph two of Count III of Complainant's Complaint, Flex-N-Gate denies that it had any obligation to take the action identified by Complainant, and, therefore, denies that it "failed to" take such action. To the extent that paragraph two of Count III of Complainant's Complaint states any further allegations of fact, Flex-N-Gate denies the same.

3. Flex-N-Gate denies the allegations of paragraph three of Count III of Complainant's Complaint.

4. The statutory section cited in paragraph four of Count III of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph four of Count III of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, prays that the Illinois Pollution Control Board find against Complainant on Count III of his Complaint, that Complainant take nothing by way of Count III his Complaint, and that the Illinois Pollution Control Board grant Flex-N-Gate all relief just and proper in the premises.

COUNT IV

FAILURE TO AMEND THE CONTINGENCY PLAN FOLLOWING FAILURE OF THE PLAN

Flex-N-Gate reincorporates and realleges its responses to Complainant's Allegations Common to All Counts in response to Count IV of Complainant's Complaint.

1. The regulation cited in paragraph one of Count IV of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph one of Count IV of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

2. In response to paragraph two of Count IV of Complainant's Complaint, Flex-N-Gate denies that any "hydrogen sulfide release" occurred at the facility. Flex-N-Gate further denies that "[t]he contingency plan failed," and Flex-N-Gate denies that the contingency plan was triggered by the "incident" at issue. To the extent that paragraph two of Count IV of Complainant's Complaint states any further allegations of fact, Flex-N-Gate denies the same.

3. In response to paragraph three of Count IV of Complainant's Complaint, Flex-N-Gate denies that any "hydrogen sulfide release" occurred at the facility. Flex-N-Gate further denies that it had any obligation to "amend the contingency plan," and therefore denies that it "failed" to do so. To the extent that paragraph three of Count IV of Complainant's Complaint states any further allegations of fact, Flex-N-Gate denies the same.

4. Flex-N-Gate denies the allegations of paragraph four of Count IV of Complainant's Complaint.

5. The statutory section cited in paragraph five of Count IV of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph five of Count IV of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, prays that the Illinois Pollution Control Board find against Complainant on Count IV of his Complaint, that Complainant take nothing by way of Count IV his Complaint, and that the Illinois Pollution Control Board grant Flex-N-Gate all relief just and proper in the premises.

COUNT V

**FAILURE TO AMEND THE CONTINGENCY
PLAN IN RESPONSE TO CHANGED CIRCUMSTANCES**

Flex-N-Gate reincorporates and realleges its responses to Complainant's Allegations Common to All Counts in response to Count V of Complainant's Complaint.

1. The regulation cited in paragraph one of Count V of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph one of Count V of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

2. Flex-N-Gate admits the allegations of paragraph two of Count V of Complainant's Complaint, but denies that "[t]he plan" was required to "specifically address the possibility of an acid spill resulting in a hydrogen sulfide release."

3. In response to paragraph three of Count V of Complainant's Complaint, Flex-N-Gate denies that a "hydrogen sulfide emission incident" occurred at the facility. Flex-N-Gate further denies that hydrogen sulfide constitutes "hazardous waste" or a "hazardous waste constituent." Flex-N-Gate further denies any "possibility that an acid spill could result in a release of hydrogen sulfide." Flex-N-Gate further denies any other factual allegations of paragraph three of Count V of Complainant's Complaint.

4. Flex-N-Gate denies the allegations of paragraph four of Count V of Complainant's Complaint.

5. Flex-N-Gate admits the allegations of paragraph five, but denies that it had any obligation to, or that any need exists to, "amend[] the contingency plan."

6. Flex-N-Gate denies the allegations of paragraph six of Count V of Complainant's Complaint.

7. The statutory section cited in paragraph seven of Count V of Complainant's Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph seven of Count V of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, prays that the Illinois Pollution Control Board find against Complainant on Count V of his Complaint, that Complainant take nothing by way of Count V his Complaint, and that the Illinois Pollution Control Board grant Flex-N-Gate all relief just and proper in the premises.

COUNT VI

FAILURE TO CARRY OUT CONTINGENCY PLAN AS REQUIRED BY THE PLAN

Flex-N-Gate reincorporates and realleges its responses to Complainant's Allegations Common to All Counts in response to Count VI of Complainant's Complaint.

1. Flex-N-Gate has insufficient information to admit or deny the allegations contained in paragraph one of Count VI of Complainant's Complaint, and therefore denies the same.

2. Flex-N-Gate's "Emergency Response and Contingency Plan" speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph two of Count VI of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

3. Flex-N-Gate's "Emergency Response and Contingency Plan" speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph three of Count VI of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

4. In response to paragraph four of Count VI of Complainant's Complaint, Flex-N-Gate states that it does not know what Complainant means by the phrase "trained department associates recognized the emergency, and began spill response," and therefore has insufficient information to admit or deny such allegation, and therefore denies the same. To the extent that paragraph four of Count VI of Complainant's Complaint states any further factual allegations, Flex-N-Gate denies the same.

5. In response to paragraph five of Count VI of Complainant's Complaint, Flex-N-Gate states that it does not know what Complainant means by the phrase "trained department associates recognized the emergency," and therefore has insufficient information to admit or deny such allegation, and therefore denies the same. The remainder of paragraph five of Count VI states a legal conclusion that does not call for a response. To the extent that paragraph five of Count VI states any further factual allegations, Flex-N-Gate denies the same.

6. Flex-N-Gate denies the allegations of paragraph six of Count VI of Complainant's Complaint, and further denies that its "Emergency Response and Contingency Plan" required it to make any such determination under the circumstances at issue in this matter.

7. Flex-N-Gate's "Emergency Response and Contingency Plan" speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph seven of Count VI of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

8. Flex-N-Gate denies the allegations of paragraph eight of Count VI of Complainant's Complaint.

9. Flex-N-Gate denies the allegations of paragraph nine of Count VI of Complainant's Complaint.

10. Flex-N-Gate denies the allegations of paragraph ten of Count VI of Complainant's Complaint.

11. Flex-N-Gate denies the allegations of paragraph 11 of Count VI of Complainant's Complaint.

12. Flex-N-Gate's "Emergency Response and Contingency Plan" speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph 12 of Count VI of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

13. Flex-N-Gate's "Emergency Response and Contingency Plan" speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that

paragraph 13 of Count VI of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

14. In response to paragraph 14 of Complainant's Complaint, Flex-N-Gate denies that its "Emergency Response and Contingency Plan" required it to "report the sulfuric acid spill." To the extent that paragraph 14 of Complainant's Complaint makes any further factual allegations, Flex-N-Gate denies the same.

15. Flex-N-Gate's "Emergency Response and Contingency Plan" speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph 15 of Count VI of Complainant's Complaint states any allegations of fact, Flex-N-Gate denies the same.

16. Flex-N-Gate admits the allegations contained in the first sentence of paragraph 16 of Count VI of Complainant's Complaint. Flex-N-Gate denies the allegations contained in the second sentence of paragraph 16 of Count VI of Complainant's Complaint.

17. Flex-N-Gate admits the allegations of paragraph 17 of Count VI of Complainant's Complaint.

18. Flex-N-Gate denies the allegations of paragraph 18 of Count VI of Complainant's Complaint.

19. If by the phrase "this spill" Complainant refers to the release of sulfuric acid, Flex-N-Gate admits the allegations of paragraph 19 of Count VI of Complainant's Complaint, but denies that this release triggered Flex-N-Gate's "Emergency Response and Contingency Plan" and denies that it was required to "carry out the plan in response

to this spill.” If by the phrase “this spill” Complainant refers to something other than the release of sulfuric acid, Flex-N-Gate has insufficient knowledge to admit or deny the allegations of paragraph 19 of Count VI of Complainant’s Complaint, and therefore denies the same. To the extent that paragraph 19 of Count VI of Complainant’s Complaint makes any further factual allegations, Flex-N-Gate denies the same.

20. Flex-N-Gate denies the allegations of paragraph 20 of Count VI of Complainant’s Complaint.

21. The statutory section cited in paragraph 21 of Count VI of Complainant’s Complaint speaks for itself, and therefore Flex-N-Gate makes no response to this allegation. To the extent that paragraph 21 of Count VI of Complainant’s Complaint states any allegations of fact, Flex-N-Gate denies the same.

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, prays that the Illinois Pollution Control Board find against Complainant on Count VI of his Complaint, that Complainant take nothing by way of Count VI his Complaint, and that the Illinois Pollution Control Board grant Flex-N-Gate all relief just and proper in the premises.

CONCLUSION

WHEREFORE, Respondent FLEX-N-GATE CORPORATION, by its attorneys HODGE DWYER ZEMAN, prays that Complainant take nothing by way of his

Complaint, and that the Illinois Pollution Control Board award FLEX-N-GATE CORPORATION all relief just and proper in the premises.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

By: 
One of Its Attorneys

Dated: March 4, 2005

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