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CLERK'S OFFICE

**MAY 11 2005**

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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)**

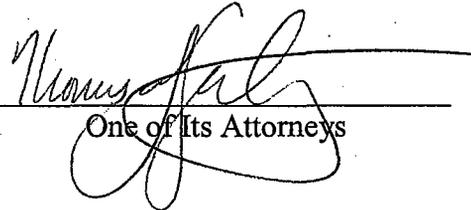
Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9274  
**(VIA FIRST CLASS MAIL)**

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 each of Flex-N-Gate Corporation's **RESPONSE TO COMPLAINANT'S MOTION TO COMPEL RESPONSE TO INTERROGATORIES; RESPONSE TO COMPLAINANT'S MOTION TO COMPEL RESPONDENT TO ADMIT THE TRUTH OF CERTAIN FACTS; and RESPONSE TO COMPLAINANT'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**, copies of which are herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,  
Respondent,

Dated: May 10, 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**

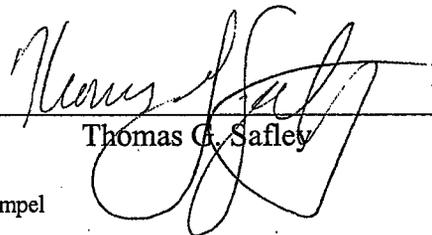
I, Thomas G. Safley, the undersigned, certify that I have served the attached  
RESPONSE TO COMPLAINANT'S MOTION TO COMPEL RESPONSE TO  
INTERROGATORIES; RESPONSE TO COMPLAINANT'S MOTION TO COMPEL  
RESPONDENT TO ADMIT THE TRUTH OF CERTAIN FACTS; and RESPONSE TO  
COMPLAINANT'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS 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 May 10, 2005.

  
\_\_\_\_\_  
Thomas G. Safley

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **MAY 11 2005**  
CHAMPAIGN COUNTY, ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

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

**RESPONSE TO COMPLAINANT'S  
MOTION TO COMPEL RESPONSE TO INTERROGATORIES**

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

**I. INTRODUCTION**

1. On or about March 19, 2005, Complainant served his Interrogatories on  
Flex-N-Gate. Affidavit of Thomas G. Safley ("Safley Aff.") attached hereto as Exhibit  
A, at ¶3.

2. On or about April 14, 2005, Flex-N-Gate mailed its Answers to  
Complainant's Interrogatories ("Answers") to Complainant, relevant portions of which  
Answers are attached hereto as Exhibit B. Safley Aff., at ¶4.

3. Complainant has filed his Motion to Compel Flex-N-Gate to respond to  
certain Interrogatories to which Flex-N-Gate objected in its Answers. See Motion to  
Compel.

4. For the reasons stated below, the Hearing Officer should deny Complainant's Motion to Compel.

## II. ANALYSIS

### A. The Hearing Officer should Deny Complainant's Motion to Compel an Additional Response to Question 9.

5. Complainant first moves the Hearing Officer to compel Flex-N-Gate to provide certain information in further response to Complainant's Interrogatory No. 9.

6. Complainant's Interrogatory No. 9 requests:

Names, addresses and telephone numbers for the following persons, and whether they are still employed by respondent.

- a. Production associates, including team leaders, working in the load/unload area for the plating line during third shift on August 4 - 5, 2004, and first shift on August 5, 2004.
- b. Solution attendants, including team leaders, working on the plating line during third shift on August 4 -5, 2004, and first shift on August 5, 2004.
- c. Safety officer working during third shift on August 4 -5, 2004.
- d. Maintenance persons, including team leaders, working during third shift on August 4 -5, 2004, and first shift on August 5, 2004.

Complainant's Interrogatories, relevant portions of which are attached hereto as Exhibit C.

7. In response to this Interrogatory, Flex-N-Gate stated as follows:

Flex-N-Gate objects to Interrogatory No. 9 to the extent that it seeks addresses and telephone numbers for team leaders currently employed by Flex-N-Gate. Such information is irrelevant because direct contact by Complainant with such persons is prohibited by Illinois Rule of Professional Conduct 4.2. As noted below, if Complainant wishes to contact such persons, he may contact Flex-N-Gate's counsel. Flex-N-Gate

further objects to Interrogatory No. 9 to the extent that it requests information which is not in Flex-N-Gate's possession. The information that Flex-N-Gate does have which is responsive to Interrogatory No. 9 is as follows:

Exhibit B at ¶9. (Emphasis added.)

Then, Flex-N-Gate provided the names of all fifty-one Facility employees within the categories designated by Complainant, and, for forty-four of those employees, also provided home addresses and telephone numbers if Flex-N-Gate had that information. See id. For the other seven employees, Flex-N-Gate did not provide addresses and telephone numbers, on the grounds stated above. Id.

8. In his Motion to Compel a further response to this Interrogatory,

Complainant states:

In response to Question 9, respondent has refused to provide complete information on certain employees, citing Illinois Rule of Professional Conduct 4.2. That rule does not limit the scope of discovery. Nor does that rule apply to the complainant in a Board enforcement action.

Motion to Compel, ¶1.

9. Flex-N-Gate strenuously disagrees.

10. First, despite Complainant's argument to the contrary, the Illinois Rules of Professional Conduct do apply in cases before the Illinois Pollution Control Board. See, e.g., Land and Lakes Co., et al, v. Village of Romeoville, PCB NO. 94-195, 1994 Ill. ENV LEXIS 1592 (Ill.Pol.Control.Bd. Dec. 14, 1994) (applying the Rules of Professional Conduct to determine whether an attorney had a conflict in a case before the Board); People v. Kershaw, No. 92-164, 1993 Ill. ENV LEXIS 691 (Ill.Pol.Control.Bd. July 22, 1993) (same). Flex-N-Gate submits that in an enforcement action before the Board, just as in a case before a Court, Rule of Professional Conduct 4.2 (quoted below) prohibits an

attorney on one side of the litigation from contacting a party represented by counsel on the other side of the litigation without permission.

11. Second, Illinois Rule of Professional Conduct 4.2 can “limit the scope of discovery,” and does limit the scope of discovery in this instance.

12. Rule of Professional Conduct 4.2 provides that:

During the course of representing a client a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the first lawyer has obtained the prior consent of the lawyer representing such other party or as may otherwise be authorized by law.

Illinois Rule of Professional Conduct 4.2.

13. When a party is a corporation, the term “party” in Rule of Professional Conduct 4.2 means:

those employees within the corporation's "control group," which is defined as those top management persons who had the responsibility of making final decisions and those employees whose advisory roles to top management are such that a decision would not normally be made without those persons' advice or opinion or whose opinions in fact form the basis of any final decision.

Fair Automotive Repair, Inc., et al. v. Car-X Service Systems, Inc., et al., 128 Ill. App. 3d 763, 771, 471 N.E.2d 554, 560 (2d Dist. 1984). (Emphasis added.)

14. The seven employees at issue are currently employed by Flex-N-Gate as “Team Leaders” or “Group Leaders.” Affidavit of Gary Hinton, attached hereto as Exhibit D, at ¶3. They are supervisors. Their job duties include, but are not limited to, directing employees they supervise in their job duties, assessing those employees’ job performance, completing performance appraisals of those employees, participating in administering the facility’s discipline policy with regard to facility employees,

communicating with top management at the facility regarding issues associated with the specific department under their supervision and with individual facility employees, and helping to develop and implement departmental and individual employee goals. They advise “top management” regarding decisions affecting their areas of responsibility at the Facility at issue and give opinions that form the basis of such decisions, and such decisions “would not normally be made without those persons’ advice or opinion.” *Id.*, at ¶4.<sup>1</sup>

15. Complainant is a lawyer, licensed to practice law in the State of Illinois. See Exhibit E; Safley Aff., ¶¶6,7. Thus, Complainant is bound by Rule 4.2. See Rule 4.2.

16. Because Complainant is a lawyer, and the Team Leaders and Group Leaders are members of the facility’s “control group,” Complainant cannot contact the seven Team Leaders and Group Leaders identified without Flex-N-Gate’s consent. See Rule 4.2.

17. Because Flex-N-Gate has not consented to Complainant contacting these employees, Complainant does not need their home addresses and telephone numbers; as Flex-N-Gate stated in response to Interrogatory No. 9, “[s]uch information is irrelevant.” (Complainant has not identified why he contends that the personal information he requests is relevant, but the only reason that Flex-N-Gate can identify that it would be relevant would be to enable Complainant to contact these persons to discuss this lawsuit.)

18. Thus, because only information that is relevant, or calculated to lead to relevant information, is discoverable, in this instance, Rule 4.2 does “limit discovery.”

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<sup>1</sup> The undersigned will submit the original of this Affidavit to the Board when it is received.

Therefore, the Hearing Officer should deny Complainant's Motion to Compel as to Interrogatory No. 9.

**B. The Hearing Officer should Deny Complainant's Motion to Compel Responses to Questions 15, 16 and 17.**

19. Complainant also moves the Hearing Officer to compel Flex-N-Gate to respond to Complainant's Interrogatories 15, 16, and 17.

20. These Interrogatories, and Flex-N-Gate's responses to these Interrogatories, stated as follows:

15. List the personnel at the facility who had received 24-hour "hazwoper" emergency response training as of third shift on August 4 -5, 2004. Why did these persons receive this training?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 15 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information. Occupational Health and Safety Administration ("OSHA") "hazwoper" training is irrelevant to the issues in this litigation, namely, whether Flex-N-Gate violated Section 21(f) of the Illinois Environmental Protection Act ("Act") and certain Illinois RCRA regulations. Further, Complainant has filed a complaint against Flex-N-Gate before OSHA. It is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

16. Was the 24-hour "hazwoper" training provided in order to comply with the preparedness requirements of 29 CFR 1910?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 16 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information. OSHA "hazwoper" training is irrelevant to the issues in this litigation, namely, whether Flex-N-Gate violated Section 21(f) of the Act and certain Illinois RCRA regulations. Further, Complainant has filed a complaint against Flex-N-Gate before OSHA. It is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

17. Did the facility have an Emergency Response Plan for the facility pursuant to 29 CFR 1910 as of August 5, 2004? If the facility did not have such a plan, why was it not required to have one?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 17 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information. The existence of an Emergency Response Plan under OSHA is irrelevant to the issues in this litigation, namely, whether Flex-N-Gate violated Section 21(f) of the Act and certain Illinois RCRA regulations. Further, Complainant has filed a complaint against Flex-N-Gate before OSHA. It is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

Exhibit B at ¶¶15-17; Exhibit C at ¶¶15-17.

21. In support of his Motion to Compel answers to these Interrogatories, Complainant makes the same general arguments he made in support of his Motion to Compel Respondent to Admit the Truth of Certain Facts. See Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts.

22. Complainant does not specifically explain why "[a list of] the personnel at the facility who had received 24-hour 'hazwoper' emergency response training as of third shift on August 4 -5, 2004," why the question of why "the 24-hour 'hazwoper' training [was] provided," why whether "the facility ha[d] an Emergency Response Plan . . . pursuant to 29 CFR 1910 as of August 5, 2004," or why the other information sought by these interrogatories is allegedly relevant or allegedly would lead to relevant information.

23. In response to Complainant's arguments, Flex-N-Gate hereby incorporates its Response to Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts. For the reasons stated in that Response, the Hearing Officer should deny Complainant's Motion to Compel as to Interrogatories 15, 16 and 17.

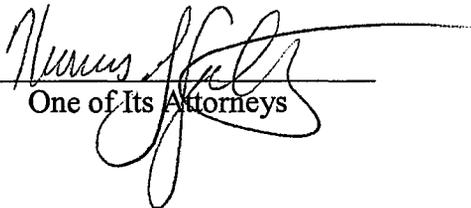
**IV. CONCLUSION**

WHEREFORE, Respondent FLEX-N-GATE CORPORATION respectfully prays that the Hearing Officer deny Complainant's Motion to Compel Response to Interrogatories and grant FLEX-N-GATE CORPORATION such other relief as the Hearing Officer deems just.

Respectfully submitted,

FLEX-N-GATE CORPORATION  
Respondent,

Dated: May 10, 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/Response to Motion to Compel - Interrogatories

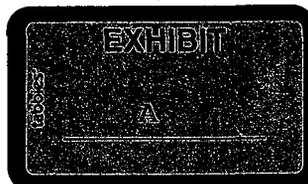
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF THOMAS G. SAFLEY**

Thomas G. Safley, 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 an attorney duly licensed in the State of Illinois, and have been retained by respondent Flex-N-Gate Corporation ("Flex-N-Gate") to represent it in this matter.
3. On or about March 19, 2005, Complainant served his Interrogatories on Flex-N-Gate.
4. On or about April 14, 2005, Flex-N-Gate mailed its Answers to Complainant's Interrogatories ("Answers") to Complainant, relevant portions of which Answers are attached to Flex-N-Gate's Response to Complainant's Motion to Compel Response to Interrogatories ("Response to Motion to Compel") as Exhibit B.
5. A copy of relevant portions of Complainant's Interrogatories is attached to Flex-N-Gate's Response to Motion to Compel as Exhibit C.

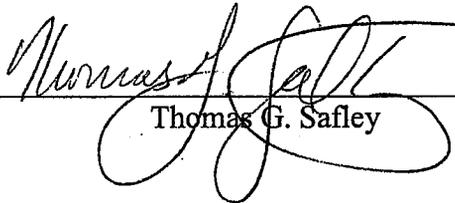


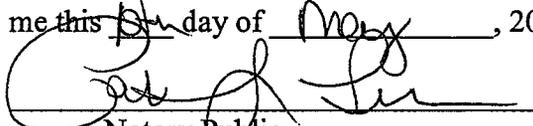
6. The document attached to Flex-N-Gate's Response to Motion to Compel as Exhibit E is a true and accurate copy of information which Flex-N-Gate obtained from the Internet site of the Illinois Attorney Registration and Disciplinary Commission ("ARDC") relating to Complainant.

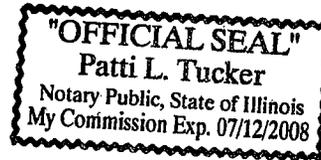
7. The undersigned has requested a certified copy of this information from the ARDC and will provide such certified copy to the Illinois Pollution Control Board when it is received.

*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.

  
Thomas G. Safley

Subscribed and sworn to before  
me this 20 day of May, 2005.  
  
Notary Public

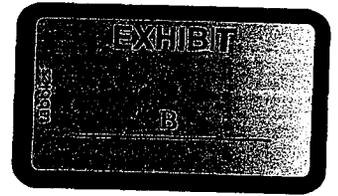


GWST:003/Fil/Affidavit of Thomas Safley - Response to MTC - Interrogs

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB No. 05-49  
(Enforcement)



**FLEX-N-GATE CORPORATION'S  
 ANSWERS TO COMPLAINANT'S INTERROGATORIES**

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"),  
 by and through its attorneys, HODGE DWYER ZEMAN, pursuant to 35 Ill. Admin.  
 Code § 101.620, and for its Answers to Complainant's Interrogatories, states as follows:

1. List any witnesses respondent intends to call at hearing, including name,  
 address, phone number, and whether the witness is to testify as an expert witness.

**ANSWER:** Flex-N-Gate has not yet determined what witnesses, if any, it  
 intends to call at hearing. Flex-N-Gate will supplement its response to this Interrogatory  
 pursuant to 35 Ill. Admin. Code § 101.616(h) at such time that it makes such  
 determination.

2. List any documentary or physical evidence respondent intends to  
 introduce at hearing.

**ANSWER:** Flex-N-Gate has not yet determined what documentary or physical  
 evidence, if any, it intends to introduce at hearing. Flex-N-Gate will supplement its  
 response to this Interrogatory pursuant to 35 Ill. Admin. Code § 101.616(h) at such time  
 that it makes such determination.

3. By which provisions has respondent, prior to August 5, 2004, claimed  
 exemption from the RCRA permit requirement for the Guardian West facility?

**ANSWER:** First, the Guardian West facility which is the subject of this action  
 ("Facility") has "claimed exemption from the RCRA permit requirement" for any

to this material as "plating room floor waste water." However, if appropriate under the circumstances, Flex-N-Gate may refer to this material in some other way.

8. By what name does the respondent wish to call the series of events that occurred during third shift on August 4 -5, 2004 on respondent's plating line, which events are the subject of this enforcement action?

**ANSWER:** Flex-N-Gate objects to Complainant's Interrogatory No. 8 to the extent that it attempts to limit Flex-N-Gate's ability to describe its Facility or events at its Facility in this litigation as appropriate under the circumstances. Flex-N-Gate further objects to Interrogatory No. 8 to the extent that by this Interrogatory, Complainant seeks information regarding how Flex-N-Gate might refer to its Facility or events at its Facility in some context unrelated to this litigation.

Notwithstanding these objections, Flex-N-Gate responds to Interrogatory No. 8 as follows:

In response to Interrogatory No. 8, Flex-N-Gate assumes that by the phrase "the series of events that occurred during third shift on August 4-5, 2004 on respondent's plating line," Complainant refers to the events alleged in paragraphs 14 through 27 of Complainant's Complaint. Because Flex-N-Gate disputes some of these allegations, Flex-N-Gate does not intend to refer to these alleged events collectively. Flex-N-Gate does intend to refer to the separation of the pipe that transports sulfuric acid from the Facility's bulk sulfuric acid storage tank to Tank No. 8 in the plating room, which separation occurred on August 5, 2004, and the resulting release of some sulfuric acid from that separated pipe, as "the Tank No. 8 piping release." However, if appropriate under the circumstances, Flex-N-Gate may refer to this separation and release of sulfuric acid in some other way.

9. Names, addresses and telephone numbers for the following persons, and whether they are still employed by respondent.

- a. Production associates, including team leaders, working in the load/unload area for the plating line during third shift on August 4 - 5, 2004, and first shift on August 5, 2004.
- b. Solution attendants, including team leaders, working on the plating line during third shift on August 4 -5, 2004, and first shift on August 5, 2004.
- c. Safety officer working during third shift on August 4 -5, 2004.
- d. Maintenance persons, including team leaders, working during third shift on August 4 -5, 2004, and first shift on August 5, 2004.

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 9 to the extent that it seeks addresses and telephone numbers for team leaders currently employed by Flex-N-Gate. Such information is irrelevant because direct contact by Complainant with such persons is prohibited by Illinois Rule of Professional Conduct 4.2. As noted below, if Complainant wishes to contact such persons, he may contact Flex-N-Gate's counsel. Flex-N-Gate further objects to Interrogatory No. 9 to the extent that it requests information which is not in Flex-N-Gate's possession. The information that Flex-N-Gate does have which is responsive to Interrogatory No. 9 is as follows:

a.

FIRST NAME	LAST NAME	LAST KNOWN ADDRESS	LAST KNOWN TELEPHONE NUMBER	CURRENTLY EMPLOYED WITH GW
RICHARD	ADAIR	4011 E. AIRPORT RD., URBANA, IL 61802	217-367-1942	Y
DZUBU	BENVINDO	c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705	217-523-4900	Y
BRIGITTE	BOMA	c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705	217-523-4900	Y
PEDRO	CASTILLO	317 2ND AVE., TR#9, RANKIN, IL 60960	217-397-2065	Y
ROLANDO	CEDILLO	41 NORWOOD RD., URBANA, IL 61802	217-384-8469	Y
ANDRION	COKELEY	333 S. LINCOLN AVE, APT. #3, URBANA, IL 61866	217-893-1480	N
FRANKLIN	CRIOLLO	2104 W. WHITE ST., APT. 98, CHAMPAIGN, IL 61821	217-352-0772	Y
SANDRA	GARCIA	3217 E. WABASH AVE., RANTOUL, IL 61866	217-893-3712	Y
RAYMOND	GLOVER	1416 EADS, URBANA, IL 61801	217-344-6837	Y
MICHEL	KALENGA	601 CRESCENT DR., CHAMPAIGN, IL 61821	217-351-3465	Y
DOUG	LARSON	883 PEACH TREE, URBANA, IL 61802	217-344-1166	Y
REGINA	LEBBIE	1712 PAULA DR., CHAMPAIGN, IL 61821	217-359-3164	Y
MAVIS	MOORE	2505 PRAIRIE GREEN ST, APT G., URBANA, IL 61801	217-344-3589	Y
GREGORIO	NUNEZ	1312 SYCAMORE, RANTOUL, IL 61866	217-893-0871	Y
ERICA	PHILLPOTT	1008 SMITH RD, APT. 20, URBANA, IL 61801	None	N
JESSICA	PRICE	2712 E. CALIFORNIA AVE., URBANA, IL 61802	217-328-4907	N
AURORA	RAMIREZ	309 E 2ND AVE., HOOPESTON, IL 60942	217-397-2172	Y
PAM	STANLEY	1301 E. LEVERETT RD, #10, CHAMPAIGN, IL 61822	217-721-0668	N
CLARENCE	STREUER	110 S. L. ST, TILTON, IL 61833	217-431-5977	N
CLEMENT	TSHOMBA	800 W. CHURCH ST, APT. #7, CHAMPAIGN, IL 61820	217-359-1117	Y
APRIL	WILLIAMS	904 N. BROADWAY, APT#104, URBANA, IL 61801	217-721-9479	Y
JON	HAWKINS	104 CAPTIVA, URBANA, IL 61802	217-354-3803	N

b.

FIRST NAME	LAST NAME	LAST KNOWN ADDRESS	LAST KNOWN TELEPHONE NUMBER	CURRENTLY EMPLOYED WITH GW
JOSEPH	AL-HUSSANI	2406 PRAIRIE GREEN DR., APT. E, CHAMPAIGN, IL 60801	217-721-5723	N
KEVIN	BLUMER	301 S. LOCUST, LODA, IL 60948	None	Y
SHERYL	DRAKE	c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705	217-523-4900	Y
LARRY	KELLY	c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705	217-523-4900	Y
AFIBA	MARTIN	1339 N., LINCOLN AVE., APT 1036, URBANA, IL 61801	217-560-2088	N
SUE	WHITE	16313 E CR1400N, CHARLESTON, IL 61920	217-345-4795	Y

c.

FIRST NAME	LAST NAME	LAST KNOWN ADDRESS	LAST KNOWN PHONE NUMBER	CURRENTLY EMPLOYED WITH GW
ROB	BIEHL	c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705	217-523-4900	Y

d.

FIRST NAME	LAST NAME	LAST KNOWN ADDRESS	LAST KNOWN TELEPHONE NUMBER	CURRENTLY EMPLOYED WITH GW
ANAS	AL-RAWI	129 E. PADDOCK DR., SAVOY, IL 61874	217-355-6313	Y
DONALD	BECKER	7382 N. 3850 EAST RD., SAYBROOK, IL 61770	309-475-8003	Y
STUART	BROWN	613 W. UNION, CHAMPAIGN, IL 61820	217-480-1344	Y
JESSY	BRUMFIELD	112 CARPER ST., SEYMOUR, IL 61875	217-766-6770	Y
TIMOTHY	CORNWELL	1120 FALCON DR., APT.#1, RANTOUL, IL 61866	217-568-7108	Y
MICHAEL	COTTON	1517 LIBERTY ST., COVINGTON, IN 47932	765-793-4934	Y
LARRY	ERICKSON	13907 E. 820 N. RD., GEORGETOWN, IL 61846	217-662-8836	N
TROY	GEISINGER	30 JAMES RD., RANTOUL, IL 61866	217-893-4327	Y
TIMOTHY	HALEY	8888 E. 1980N. RD., OAKWOOD, IL 61858	217-354-4293	Y
MIKE	HALEY	106 BLUFF ST., POTOMAC, IL 61865	217-987-6987	Y

MICHAEL	JOHNSON	2208 DALE DR., CHAMPAIGN, IL 61821	217-359-9993	Y
		c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705		
CHRIS	KINNEY		217-523-4900	Y
JOSEPH	LOCKHART	P.O. BOX 612, RANTOUL, IL 61866	217-892-2992	Y
CHRIS	LONG	20577 N CR 2600 E, OAKLAND, IL 61943	217-346-2590	Y
WESSAM	MOHAMMED	1009 N CUNNINGHAM, APT B, URBANA, IL 61802	217-344-2397	Y
KHUYEN	NGUYEN	1016 HOLLYCREST DR., CHAMPAIGN, IL 61821	217-721-2701	Y
JASON	PIERCE	302 S. BUCHANAN ST., DANVILLE, IL 61832	217-446-3177	Y
BRIAN	SELWYN	P.O. BOX 293, POTOMAC, IL 61865	217-987-6120	Y
CATHY	STANLEY	P.O. BOX 12, HOMER, IL 61849	217-896-2808	N
HERDIE	THOMAS	32 RICHARD DR., URBANA, IL 61801	217-344-2835	Y
		c/o HODGE DWYER ZEMAN, 3150 Roland Avenue, Post Office Box 5776, Springfield, IL 62705		
ERIC	TURNER		217-523-4900	Y
CHARLES	TWIGG	114 W. FIFTH ST., DANVILLE, IL 61832	217-446-0420	Y

10. List of persons who reported being sickened during third shift on August 4 -5, 2004.

**ANSWER:** The following persons reported to Facility safety manager Denny Corbett "during third shift August 4-5, 2004," that they fell ill: Afiba Martin. Flex-N-Gate is not aware of any other person who "reported being sickened during third shift on August 4-5, 2004."

11. Prior to August 5, 2004, when was the floor under the plating tanks last completely clear of sludge, debris and liquid?

**ANSWER:** Since the Facility began operation, the Plating Room Floor has never been "completely clear" of materials. This is because, if nothing else, steam condensate, drips, and dragout are continually deposited on the floor. In addition, at least part of the floor is hosed down every shift. Thus, since the Facility began operation, at least water has been located on the floor at all times.

12. What was the quantity and identity of hazardous waste generated by the facility during the months of July, August and September, 2004?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 12 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information.

13. Describe the odor of the bulk sulfuric acid used at the facility.

**ANSWER:** See attached information for description.

14. Who was the emergency coordinator for the facility during third shift on August 4 -5, 2004.

**ANSWER:** The Emergency Coordinator for the Facility pursuant to the Facility's Contingency Plan is Jackie Christensen. In addition, the Facility's Maintenance Group Leaders, at least one of whom always is present at the Facility, serve as On-Site Emergency Coordinators in the event that Ms. Christensen is not present at the Facility at the time of an emergency.

15. List the personnel at the facility who had received 24-hour "hazwoper" emergency response training as of third shift on August 4 -5, 2004. Why did these persons receive this training?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 15 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information. Occupational Health and Safety Administration ("OSHA") "hazwoper" training is irrelevant to the issues in this litigation, namely, whether Flex-N-Gate violated Section 21(f) of the Illinois Environmental Protection Act ("Act") and certain Illinois RCRA regulations. Further, Complainant has filed a complaint against Flex-N-Gate before OSHA. It is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

16. Was the 24-hour "hazwoper" training provided in order to comply with the preparedness requirements of 29 CFR 1910?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 16 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information. OSHA "hazwoper" training is irrelevant to the issues in this litigation, namely, whether Flex-N-Gate violated Section 21(f) of the Act and certain Illinois RCRA regulations. Further, Complainant has filed a complaint against Flex-N-Gate before OSHA. It is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

17. Did the facility have an Emergency Response Plan for the facility pursuant to 29 CFR 1910 as of August 5, 2004? If the facility did not have such a plan, why was it not required to have one?

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 17 on the grounds that it seeks information which is irrelevant and that it is not likely to lead to discovery of relevant or admissible information. The existence of an Emergency Response Plan under OSHA is irrelevant to the issues in this litigation, namely, whether Flex-N-Gate violated Section 21(f) of the Act and certain Illinois RCRA regulations. Further, Complainant has filed a complaint against Flex-N-Gate before OSHA. It is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

18. Did the facility have meters available to measure hydrogen sulfide levels during third shift on August 4- 5, 2004? If so, list the manufacturer and model number, and ASTM or other standard specifications.

**ANSWER:** Flex-N-Gate objects to Interrogatory No. 18 on the grounds that it seeks information that is irrelevant and that it is not calculated to lead to the discovery of relevant or admissible evidence.

Notwithstanding the foregoing, Flex-N-Gate responds to Interrogatory No. 18 as follows:

Flex-N-Gate did have such meters available, but this is not because Flex-N-Gate thought that a release of hydrogen sulfide could occur at the Facility. Rather, the Facility has standard meters for confined space entry under OSHA rules, which meters can detect hydrogen sulfide as well as other materials. The manufacturer and model number for these meters are as follows:

MicroMax Pro by Lumidor Safety Products.

The specifications for these meters are included in the portion of the operating instructions for the meters produced herewith.

19. Did the facility have respirators approved for use with hydrogen sulfide during third shift on August 4- 5, 2004? If so, list the manufacturer and model number, and ASTM or other standard specifications.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

MORTON F. DOROTHY,

Complainant,

vs.

FLEX-N-GATE CORPORATION,  
an Illinois Corporation,

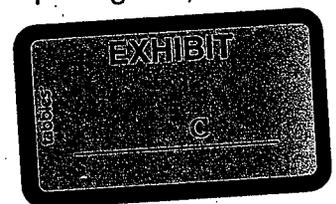
Respondent.

No. PCB 05-049

**INTERROGATORIES**

Complainant Morton F. Dorothy requests that respondent Flex-N-Gate Corporation respond to the following interrogatories within 30 days after the date of this request:

1. List any witnesses respondent intends to call at hearing, including name, address, phone number, and whether the witness is to testify as an expert witness.
2. List any documentary or physical evidence respondent intends to introduce at hearing.
3. By which provisions has respondent, prior to August 5, 2004, claimed exemption from the RCRA permit requirement for the Guardian West facility?
4. Has respondent had any laboratory analyses performed on the liquid, sludge or debris under the plating line? Provide the results of such analyses.
5. Has respondent had any laboratory analyses performed on the influent into what respondent refers to as the "wastewater treatment unit" receiving "wastewater" from the plating area? Provide the results of such analyses.
6. By what name does respondent wish to refer to the area under the plating tanks?
7. By what name does respondent wish to call the accumulated liquid in the sump area under the plating tanks?
8. By what name does the respondent wish to call the series of events that occurred during third shift on August 4 - 5, 2004 on respondent's plating line, which events are the subject of this enforcement action?



9. Names, addresses and telephone numbers for the following persons, and whether they are still employed by respondent.
  - a. Production associates, including team leaders, working in the load/unload area for the plating line during third shift on August 4 - 5, 2004, and first shift on August 5, 2004.
  - b. Solution attendants, including team leaders, working on the plating line during third shift on August 4 - 5, 2004, and first shift on August 5, 2004.
  - c. Safety officer working during third shift on August 4 - 5, 2004.
  - d. Maintenance persons, including team leaders, working during third shift on August 4 - 5, 2004, and first shift on August 5, 2004.
10. List of persons who reported being sickened during third shift on August 4 - 5, 2004.
11. Prior to August 5, 2004, when was the floor under the plating tanks last completely clear of sludge, debris and liquid?
12. What was the quantity and identity of hazardous waste generated by the facility during the months of July, August and September, 2004?
13. Describe the odor of the bulk sulfuric acid used at the facility.
14. Who was the emergency coordinator for the facility during third shift on August 4 - 5, 2004.
15. List the personnel at the facility who had received 24-hour "hazwoper" emergency response training as of third shift on August 4 - 5, 2004. Why did these persons receive this training?
16. Was the 24-hour "hazwoper" training provided in order to comply with the preparedness requirements of 29 CFR 1910?
17. Did the facility have an Emergency Response Plan for the facility pursuant to 29 CFR 1910 as of August 5, 2004. If the facility did not have such a plan, why was it not required to have one?
18. Did the facility have meters available to measure hydrogen sulfide levels during third shift on August 4 - 5, 2004? If so, list the manufacturer and model number, and ASTM or other standard specifications.

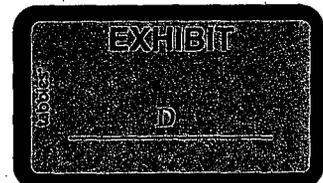
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF GARY HINTON**

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

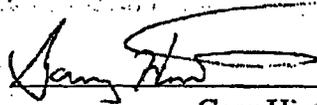
1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by Flex-N-Gate Corporation ("Flex-N-Gate") as Human Resources Manager at the facility at issue in the above-captioned matter.
3. The seven persons whom Flex-N-Gate identified in response to Complainant's Interrogatory No. 9 without providing home addresses and telephone numbers are currently employed by Guardian West as "Team Leaders" or "Group Leaders".
4. As "Team Leaders" or "Group Leaders", these persons are supervisors at the facility at issue in the above-captioned matter. Their job duties include, but are not limited to, directing employees they supervise in their job duties, assessing those employees' job performance, completing performance appraisals of those employees, participating in administering the facility's discipline policy with regard to facility employees, communicating with top management at the facility regarding issues



associated with the specific departments under their supervision and with individual facility employees, and helping to develop and implement departmental and individual employee goals. They advise top management at Guardian West regarding decisions affecting their areas of responsibility at the facility at issue and give opinions that form the basis of such decisions. And, such decisions would not normally be made without those persons' advice or opinion.

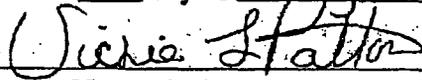
*Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

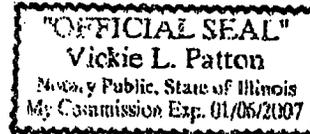
**FURTHER AFFIANT SAYETH NOT.**



Gary Hinton

Subscribed and sworn to before  
me this 10 day of May, 2005.

  
Notary Public



GWST:003/Fil/Affidavit of Gary Hinton - Response to MTC - Interrogs

 <b>ARDC</b> ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS
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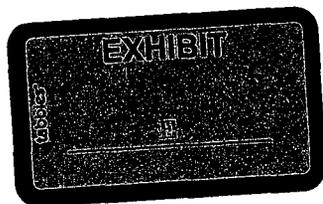
## **LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD**

ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of May 4, 2005 at 9:00:00 AM:

<b>Full Licensed Name:</b>	Morton Freer Dorothy
<b>Full Former name(s):</b>	None
<b>Date of Admission as Lawyer by Illinois Supreme Court:</b>	November 3, 1978
<b>Registered Business Address:</b>	804 East Main Urbana, IL 61802-2822
<b>Registered Business Phone:</b>	(217) 384-1010
<b>Illinois Registration Status:</b>	Active and authorized to practice law
<b>Malpractice Insurance: (Current as of date of registration; consult attorney for further information)</b>	In annual registration, attorney reported that he/she does not have malpractice coverage. (Some attorneys, such as judges, government lawyers, and in-house corporate lawyers, may not carry coverage due to the nature of their practice setting.)

**Record of Public Discipline and Proceedings:** None

Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information related to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information related to the existence or status of any investigation is not available. For additional information regarding data on this website, contact ARDC at (312)



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

MOBILITY BOARD  
DOROTHY,

Complainant,

v.

FLEX-N-GATE CORPORATION,  
an Illinois corporation,

Respondent.

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PCB 05-49

**RESPONSE TO COMPLAINANT'S MOTION TO COMPEL  
RESPONDENT TO ADMIT THE TRUTH OF CERTAIN FACTS**

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"),

by and through its attorneys, HODGE DWYER ZEMAN, and for its Response to Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts ("Motion to Compel"), states as follows:

**I. INTRODUCTION**

1. On or about March 19, 2005, Complainant served his Request to Admit the Truth of Certain Facts ("Request to Admit") on Flex-N-Gate. Affidavit of Thomas G. Safley ("Safley Aff.") attached hereto as Exhibit A, at ¶3.

2. On or about April 14, 2005, Flex-N-Gate mailed its Response to Complainant's Request to Admit ("Response to Request to Admit") to Complainant, relevant portions of which Response are attached hereto as Exhibit B. Safley Aff., at ¶4.

3. Complainant has filed his Motion to Compel Flex-N-Gate to admit or deny certain Requests to Admit to which Flex-N-Gate objected in its Response to Request to Admit. See Motion to Compel.

4. For the reasons stated below, the Hearing Officer should deny Complainant's Motion to Compel.

**II. THE HEARING OFFICER MUST DISREGARD PORTIONS OF COMPLAINANT'S MOTION TO COMPEL.**

5. In paragraph two of his Motion to Compel, Complainant makes certain allegations of fact. See Motion to Compel, ¶2.

6. Complainant does not support these allegations of fact with an affidavit or otherwise. See id.

7. "Facts asserted [in motions filed in cases before the Board] that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure." 35 Ill. Admin. Code § 101.504.

8. Because Complainant does not support these allegations of fact as required by Section 101.504, the Hearing Officer must disregard these allegations in ruling on Complainant's Motion to Compel.

**III. THE HEARING OFFICER SHOULD DENY COMPLAINANT'S MOTION TO COMPEL.**

9. Complainant's Requests to Admit Nos. 9 and 10 state as follows:

Complainant Morton F. Dorothy requests that respondent Flex-N-Gate Corporation admit the truth of the following statements . . . :

\* \* \*

9. Complainant received 24-hour "hazwoper" training from respondent.

10. Afiba Martin received 24-hour "hazwoper" training from respondent.

Complainant's Request to Admit, a copy of which is attached hereto as Exhibit C. Safley Aff., at ¶5.

10. Flex-N-Gate responded identically in substance to these Requests to Admit, stating as follows:

Flex-N-Gate objects to Request to Admit No. 9 [or 10] on the grounds that (1) the fact which it asks Flex-N-Gate to admit is irrelevant, and (2) Complainant has filed a complaint against Flex-N-Gate before the Occupational Safety and Health Administration ("OSHA"), and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

Exhibit B, at ¶¶9, 10.

11. As Complainant notes, under the Board's rules, "[a]ll relevant information and information calculated to lead to relevant information is discoverable." Motion to Compel, ¶3 (citing 35 Ill. Admin. Code § 101.616(a)).

12. However, as Flex-N-Gate stated in response to Requests to Admit Nos. 9 and 10, the question of whether Complainant and another person received "hazwoper" training from Flex-N-Gate is irrelevant to Complainant's claims in this lawsuit, and is not "calculated to lead to relevant information."

13. As the Hearing Officer is aware, Complainant's Complaint alleges that Flex-N-Gate has violated Section 21(f) of the Illinois Environmental Protection Act ("Act"), and associated regulations, by allegedly improperly managing hazardous waste without a Resource Conservation and Recovery Act ("RCRA") permit, and by allegedly failing to take certain actions relating to the RCRA contingency plan for the facility at issue in this case. See Complaint.

14. In support of his Motion to Compel, Complainant argues:

[Flex-N-Gate] appears to have prepared a single “Emergency Response [under OSHA regulations] and Contingency Plan [under RCRA]” to meet both requirements[, and,] [h]aving done this . . . respondent cannot now complain that the “OSHA issues” are “irrelevant” and not “calculated to lead to the discovery of relevant information.” . . . Requests 9 and 19 [sic, i.e., 10] ask respondent to admit that complainant and Afiba Martin received 24-hour “hazwoper” training from respondent. Such trained individuals have a role in respondent’s Emergency Response and Contingency Plan.

Motion to Compel, ¶¶6-7.

15. However, this argument does not explain why Complainant feels that the question of whether or not he and another person received certain training under Occupational Safety and Health Administration (“OSHA”) rules is relevant to whether Flex-N-Gate violated the Act or the Board’s RCRA regulations, or how the answer to this question will lead to relevant evidence. That is, Complainant has not explained how his allegation that “[s]uch trained individuals have a role in respondent’s Emergency Response and Contingency Plan” makes his allegations of RCRA violations against Flex-N-Gate any more or less true.

16. Even if the Facility’s RCRA Contingency Plan could have some applicability under OSHA rules, that does not mean that all OSHA matters automatically become relevant in a RCRA matter; thus, Flex-N-Gate disagrees with Complainant’s argument that Flex-N-Gate may not argue that certain “‘OSHA issues’ are ‘irrelevant’ and not ‘calculated to lead to the discovery of relevant information.’”

17. Flex-N-Gate has not objected to every discovery request made by Complainant that relates in any way to OSHA. See, e.g., Complainant’s Request for Production of Documents, a copy of which is attached hereto as Exhibit D, Nos. 12 and

14 (requesting copies of communications between Flex-N-Gate and OSHA, and “OSHA notices,” regarding “the incident” at issue in this matter); Flex-N-Gate’s Response to that Request for Production, relevant portions of which are attached hereto as Exhibit E (providing the documents requested). However, again, even if the Facility’s RCRA Contingency Plan has some OSHA applicability, that does not mean that all OSHA issues automatically are relevant in this case, and Complainant has not explained how the question of whether or not he and another person received certain OSHA training could be relevant or could lead to relevant information.

18. Further, as Flex-N-Gate notes in response to Requests to Admit Nos. 9 and 10, Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

19. In response, Complainant argues that he “is not a party to the OSHA proceeding” and “has not been allowed to” participate in that proceeding, and further, that “[a]lthough the admission complainant seeks might be relevant in the OSHA proceeding, respondent has cited no rule limiting the scope of discovery in one proceeding to items that are relevant only to that proceeding and none other.” Motion to Compel at ¶¶2, 5. (Emphasis added.)

20. As noted above, the Hearing Officer must disregard Complainant’s allegations regarding his status in the OSHA proceeding because Complainant does not support those allegations as the Board’s rules require.

21. Further, Complainant misunderstands Flex-N-Gate’s argument. Flex-N-Gate does not argue that relevant information is not discoverable in a Board action if that

information also might be relevant in another proceeding. What Flex-N-Gate argues is (1) that information that is irrelevant is not discoverable in a Board proceeding, and (2) that where information is irrelevant in a Board proceeding, a party cannot use discovery in the Board proceeding to gain that information for use in some other forum.

22. Flex-N-Gate's position is that it is axiomatic that when Section 101.616(a) of the Board's rules provides that "[a]ll relevant information and information calculated to lead to relevant information is discoverable," it refers to information that is relevant in a Board proceeding, and that the Board did not intend its discovery rules to be used to discover information that is irrelevant in a Board proceeding so that such information could be used in some other forum.

23. Likewise, Flex-N-Gate submits that it is axiomatic that when Section 101.618(d) provides that "[a] party may serve a written request for admissions of the truth of specific statements of fact," it refers to "specific statements of fact" that are relevant in a Board proceeding, and that the Board did not intend this rule to be used to force parties to admit or deny statements of fact that are irrelevant in a Board proceeding so that the admission or denial can be used in some other forum.

24. Again, Complainant has not supported his allegations of fact. Complainant has admitted, however, that "[t]he incident alleged in the complaint . . . [is] the subject of OSHA Complaint NO. 204985014." Complainant's Motion to Accept for Hearing and for Expedited Discovery, at ¶8. And, Complainant has stated that the "admission [he] seeks might be relevant in the OSHA proceeding." Motion to Compel, at ¶5.

25. Further, regardless of Complainant's ability to participate in an OSHA proceeding, Flex-N-Gate is aware of nothing that would prevent Complainant from making additional complaints to OSHA regarding Flex-N-Gate, potentially based on admissions or denials which Complainant states "might be relevant" to OSHA.

26. Thus, Flex-N-Gate's point is that (1) the information Complainant seeks is irrelevant in this matter; (2) Complainant asserts that this information might be relevant in another forum; and (3) Complainant should not be able to use the Board's discovery rules to seek information that is irrelevant here but potentially could be relevant in the other forum.

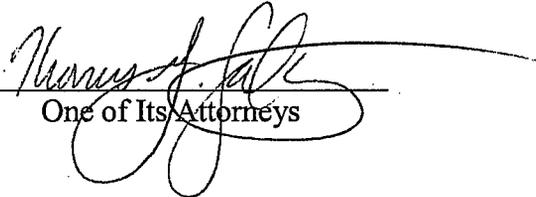
#### IV. CONCLUSION

WHEREFORE, Respondent, FLEX-N-GATE CORPORATION, respectfully prays that the Hearing Officer deny Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts and grant FLEX-N-GATE CORPORATION such other relief as the Hearing Officer deems just.

Respectfully submitted,

FLEX-N-GATE CORPORATION  
Respondent,

Dated: May 10, 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

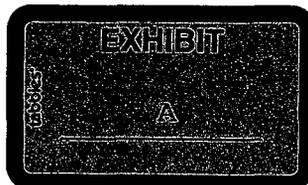
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF THOMAS G. SAFLEY**

Thomas G. Safley, 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 an attorney duly licensed in the State of Illinois, and have been retained by respondent Flex-N-Gate Corporation ("Flex-N-Gate") to represent it in this matter.
3. On or about March 19, 2005, Complainant served his Request to Admit the Truth of Certain Facts ("Request to Admit") on Flex-N-Gate.
4. On or about April 14, 2005, Flex-N-Gate mailed its Response to Complainant's Request to Admit to Complainant, relevant portions of which Response are attached to Flex-N-Gate's Response to Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts ("Response to Motion to Compel") as Exhibit B.
5. A copy of Complainant's Request to Admit is attached to Flex-N-Gate's Response to Motion to Compel as Exhibit C.

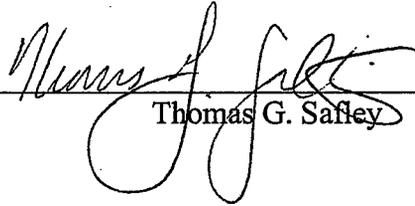


6. A copy of Complainant's Request for Production of Documents is attached to Flex-N-Gate's Response to Motion to Compel as Exhibit D.

7. A copy of Flex-N-Gate's Response to Complainant's Request for Production of Documents is attached to Flex-N-Gate's Response to Motion to Compel as Exhibit E.

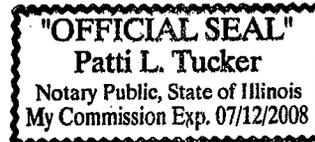
*Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

FURTHER AFFIANT SAYETH NOT.

  
Thomas G. Safley

Subscribed and sworn to before  
me this 10th day of May, 2005.

  
Notary Public



GWST:003/Fil/Affidavit of Thomas Safley - Response to MTC - RFA

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**FLEX-N-GATE CORPORATION'S RESPONSE TO  
COMPLAINANT'S REQUEST TO ADMIT THE TRUTH OF CERTAIN FACTS**

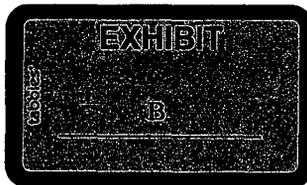
COMES NOW Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"), and for its Response to Complainant's Request to Admit the Truth of Certain Facts ("Request to Admit"), states as follows:

**GENERAL OBJECTION**

Flex-N-Gate objects to Complainant's Request to Admit on the grounds that Complainant did not comply with Section 101.618(c) of the Illinois Pollution Control Board's ("Board") procedural rules, 35 Ill. Admin. Code § 101.618(c), in serving its Request to Admit.

**RESPONSES TO REQUESTS TO ADMIT**

1. Flex-N-Gate objects to Request to Admit No. 1 on the grounds that it asks Flex-N-Gate to admit a conclusion of law, not a statement of fact. Section 101.618(d) of the Board's procedural rules only authorizes requests for admission "of the truth of specific statements of fact." 35 Ill. Admin. Code § 101.618(d). (Emphasis added.) The Illinois Supreme Court has held that "requests to admit may not include legal



that it is "a large quantity generator of hazardous waste." Flex-N-Gate admits that it treats some of its hazardous waste "on-site in tanks," but denies that it treats all of its hazardous waste "on-site in tanks." Flex-N-Gate admits that it does not have "a RCRA permit or interim status." To the extent that Request to Admit No. 6 makes any other statements of fact, Flex-N-Gate denies the same.

7. Flex-N-Gate denies the truth of the statement in paragraph seven for the same reasons stated in response to Requests to Admit No. 5 and No. 6 above.

8. Flex-N-Gate admits that it is "a large quantity generator of hazardous waste." Flex-N-Gate admits that it treats some of its hazardous waste "on-site in tanks," but denies that it treats all of its hazardous waste "on-site in tanks." Flex-N-Gate admits that it does not have "a RCRA permit or interim status." To the extent that Request to Admit No. 8 makes any other statements of fact, Flex-N-Gate denies the same.

9. Flex-N-Gate objects to Request to Admit No. 9 on the grounds that (1) the fact which it asks Flex-N-Gate to admit is irrelevant, and (2) Complainant has filed a complaint against Flex-N-Gate before the Occupational Safety and Health Administration ("OSHA"), and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

10. Flex-N-Gate objects to Request to Admit No. 10 on the grounds that (1) the fact which it asks Flex-N-Gate to admit is irrelevant, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

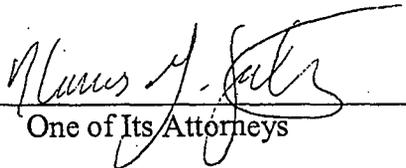
11. Flex-N-Gate admits the truth of the statement in paragraph eleven, but denies that it had any obligation to make such notification.

Respectfully submitted, and, as to  
objections,

FLEX-N-GATE CORPORATION,  
Respondent,

Date: April 14, 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/Response to Request to Admit Certain Facts

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

MORTON F. DOROTHY,

Complainant,

vs.

FLEX-N-GATE CORPORATION,  
an Illinois Corporation,

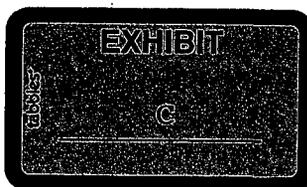
Respondent.

No. PCB 05-049

**REQUEST TO ADMIT THE TRUTH OF CERTAIN FACTS**

Complainant Morton F. Dorothy requests that respondent Flex-N-Gate Corporation admit the truth of the following statements within 30 days after the date of this request:

1. The complaint in this case is a citizens complaint filed pursuant to Section 31 of the Environmental Protection Act ("Act") (415 ILCS 5/31) and 35 Ill. Adm. Code 103.200.
2. Complainant is an individual residing in Champaign County, Illinois.
3. Complainant's identity and residence was known to the respondent at the time the answer was filed.
4. Complainant's identity and residence was known to the firm of Hodge Dwyer Zeman at the time the answer was filed.
5. Respondent has in the past claimed that the facility operates pursuant to 35 Ill. Adm. Code 722.134.
6. Respondent has in the past claimed that the facility operates pursuant to 35 Ill. Adm. Code 722.134(a), as a large quantity generator of hazardous waste which is treated on-site in tanks, without a RCRA permit or interim status.
7. Respondent has in the past stated to the Illinois Environmental Protection Agency that the facility operates pursuant to 35 Ill. Adm. Code 722.134(a).
8. Respondent is a large quantity generator of hazardous waste which is treated on-site in tanks, without a RCRA permit or interim status.



9. Complainant received 24-hour "hazwoper" training from respondent.
10. Afiba Martin received 24-hour "hazwoper" training from respondent.
11. Respondent did not notify local agencies with designated response roles in the facility's Emergency Response and Contingency Plan concerning the incident during third shift on August 4-5, 2004.
12. Respondent did not identify the amount and areal extent of the release during or following the incident during third shift on August 4-5, 2004.
13. Respondent did not assess possible hazards to human health and the environment during or following the incident during third shift on August 4-5, 2004.
14. Respondent did not report to the Agency within fifteen days the incident during third shift on August 4-5, 2004.
15. The facility's Emergency Response and Contingency Plan in effect on August 4-5, 2004, did not specifically address the possibility of an acid spill resulting in a hydrogen sulfide release.
16. The facility does not have an Emergency Response Plan for the facility pursuant to 29 CFR 1910 as of August 6, 2004.
17. Respondent is not required to have Emergency Response Plan for the facility pursuant to 29 CFR 1910 because it has prepared a Contingency Plan pursuant to 35 Ill. Adm. Code 725.Subpart D.
18. 35 Ill. Adm. Code 725.Subpart D is the Illinois equivalent of 40 CFR 265, Subpart D.
19. Respondent prepared its "Emergency Response and Contingency Plan" pursuant to 35 Ill. Adm. Code 725.Subpart D in order to comply with the conditions of 35 Ill. Adm. Code 722.134.
20. Tony Rice stated to complainant, or about August 13, 2004, during the course of a discussion of the August 4-5 incident, that the ruptured pipe "emptied the day tank".
21. Tony Rice testified under oath on October 26, 2004, that the acid spill was from the fill pipe to Tank 8 and that he was told that the spill was concentrated sulfuric acid.

Morton F. Dorothy  
Morton F. Dorothy, Complainant

Morton F. Dorothy  
804 East Main  
Urbana IL 61802  
217/384-1010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

MORTON F. DOROTHY, )

Complainant, )

vs. )

No. PCB 05-049

FLEX-N-GATE CORPORATION, )

an Illinois Corporation, )

Respondent. )

**REQUEST FOR PRODUCTION OF DOCUMENTS**

Complainant Morton F. Dorothy requests that respondent Flex-N-Gate Corporation produce the following documents within 30 days after the date of this request:

1. The Emergency Response and Contingency Plan for the facility as of August 5, 2004.
2. Any amended Emergency Response and Contingency Plan for the facility since August 5, 2004.
3. The Emergency Response Plan for the facility pursuant to 29 CFR 1910 as of August 5, 2004.
4. Any amended Emergency Response Plan for the facility pursuant to 29 CFR 1910 since August 5, 2004.
5. The operating log for the plating line, including the dates August 4 through August 8, 2004. Although the entire volume of the log must be produced for inspection, complainant seeks copies of only the indicated dates.
6. Plating lab notebook, including the dates August 4 through August 8, 2004. Although the entire volume of the log must be produced for inspection, complainant seeks copies of only the indicated dates.
7. Maintenance log and maintenance work orders for the plating line for August 5 through August 8, 2004.
8. Any written accounts of the incident on third shift, August 4-5, 2004, produced by or for respondent.



9. Copies of hazardous waste manifests initiated by the facility during July, August and September, 2004.
10. Material Safety Data Sheets for the following:
  - a. Bulk sulfuric acid used by the facility in August, 2004.
  - b. Tank 20 additive "TA"
  - c. Tank 20 additive HSA-90 or "High Sulfur Additive-90".
11. Copies of all correspondence with the Illinois Environmental Protection Agency concerning the incident alleged in the complaint.
12. Copies of all correspondence with the Occupational Safety and Health Administration (OSHA) concerning the incident alleged in the complaint.
13. Copies of all correspondence with the Illinois Environmental Protection Agency concerning the RCRA permit status or claims of exemption from the RCRA permit requirement.
14. Copies of all OSHA notices posted in connection with the incident alleged in the complaint.
15. Account of the incident that is the subject of the complaint delivered to Tony Rice on or about August 9, 2004.
16. The "Hazwoper 24-hour" training certificate for complainant.
17. Training notebook and materials used by respondent for "Hazwoper 24-hour" training prior to the incident alleged in the complaint.
18. Copies of the "threat letters that if we did not hire this employee back he would make it difficult for Guardian West by calling local and federal agencies", referenced in a fax sent by Denny Corbett to Peggy A. Zweber on September 14, 2004.

Morton F. Dorothy  
804 East Main  
Urbana IL 61802  
217/384-1010

Morton F. Dorothy  
Morton F. Dorothy, Complainant

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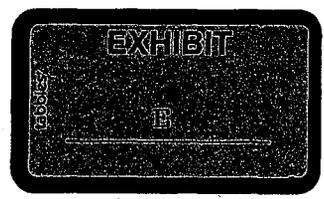
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**FLEX-N-GATE CORPORATION'S RESPONSE TO  
COMPLAINANT'S REQUEST FOR PRODUCTION OF DOCUMENTS**

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"), and for its Response to Complainant's Request for Production of Documents, states as follows:

1. A copy of the document requested is produced herewith.
2. A copy of the document requested is produced herewith.
3. Flex-N-Gate objects to Request for Production No. 3 on the grounds that (1) the document which Request No. 3 seeks is irrelevant, as it relates only to Occupational Safety and Health Administration ("OSHA") issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.
4. Flex-N-Gate objects to Request for Production No. 4 on the grounds that (1) the document which Request No. 4 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.



9. Copies of the documents requested are produced herewith.
10. Copies of the documents requested are produced herewith.
11. Flex-N-Gate has no documents responsive to Request for Production No.

11.

12. Copies of the documents requested are produced herewith.
13. Copies of the documents requested are produced herewith.
14. Copies of the documents requested are produced herewith.

15. Flex-N-Gate does not know to what document Request No. 15 refers. If Complainant provides further information regarding this document (e.g., its author), Flex-N-Gate will supplement its response to this Request as appropriate.

16. Flex-N-Gate objects to Request for Production No. 16 on the grounds that (1) the document which Request No. 16 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

17. Flex-N-Gate objects to Request for Production No. 17 on the grounds that (1) the document which Request No. 17 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

18. Flex-N-Gate objects to Request for Production No. 18 on the grounds that (1) the document which Request No. 18 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

MAY 11 2005

STATE OF ILLINOIS  
Pollution Control Board

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

**RESPONSE TO COMPLAINANT'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"), by and through its attorneys, HODGE DWYER ZEMAN, and for its Response to Complainant's Motion to Compel Production of Documents ("Motion to Compel"), states as follows:

**I. INTRODUCTION**

1. On or about March 19, 2005, Complainant mailed his Request for Production of Documents ("Request for Production") to Flex-N-Gate. Affidavit of Thomas G. Safley ("Safley Aff.") attached hereto as Exhibit A, at ¶3.

2. On or about April 14, 2005, Flex-N-Gate mailed its Response to Complainant's Request for Production to Complainant, a copy of which Response is attached hereto as Exhibit B. Safley Aff., at ¶4.

3. Complainant has filed his Motion to Compel Flex-N-Gate to provide additional responses to certain Requests for Production. See Motion to Compel.

4. For the reasons stated below, the Hearing Officer should deny Complainant's Motion to Compel.

**II. THE HEARING OFFICER MUST DISREGARD PORTIONS OF COMPLAINANT'S MOTION TO COMPEL.**

**A. The Hearing Officer must Disregard Complainant's Unsupported Allegations of Fact.**

5. In certain paragraphs of his Motion to Compel, Complainant makes

allegations of fact, specifically:

- paragraph 2 – all statements;
- paragraph 6 – all statements;
- paragraph 7 – second, third, fourth and fifth sentences;
- paragraph 9 – first four sentences; and,
- paragraph 10 – second, third, fourth and fifth sentences. [Paragraph 10 is identical to paragraph 7.]

See Motion to Compel, ¶¶2, 6, 7, 9, and 10.

6. Complainant does not support these allegations of fact with an affidavit or otherwise. See id.

7. “Facts asserted [in motions filed in cases before the Board] that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure.” 35 Ill. Admin. Code § 101.504.

8. Because Complainant does not support these allegations of fact as required by Section 101.504, the Hearing Officer must disregard these allegations in ruling on Complainant's Motion to Compel.

**B. The Hearing Officer must Disregard Complainant's Conclusory, Scandalous and Impertinent Allegations in Paragraph Nine of His Motion to Compel.**

9. Further, the Hearing Officer must disregard Complainant's conclusory, scandalous and impertinent allegations in paragraph nine of his Motion to Compel on other grounds.

10. Paragraph nine, without any support, alleges that an employee of Flex-N-Gate committed criminal acts, stating: "Complainant is aware that Denny Corbett has made several false statements, including statements made in writing to OSHA in its investigation of this incident." See Motion to Compel, ¶9.

11. First, as discussed above, the Hearing Officer must disregard this allegation because Complainant did not support it as required by the Illinois Pollution Control Board's ("Board") Rules.

12. Second, the Hearing Officer must disregard this allegation because it is conclusory, and therefore could not be relied upon even if it was supported by affidavit. The Board has long held that it "[can] not grant relief . . . on the basis of a mere conclusion" in an affidavit. EPA v. Rhodes, PCB No. 71-53, 1972 Ill. ENV LEXIS 169, at \*1 (Ill.Pol.Control.Bd. Jan. 24, 1972). And, in recent cases, the Board has stricken conclusory allegations from affidavits filed with it. See, e.g., 2222 Elston LLC v. Purex Indus., Inc., et al., PCB No. 03-55, 2003 Ill. ENV LEXIS 359, at \*\*17-19 (Ill.Pol.Control.Bd. June 19, 2003) (striking an affidavit that was "conclusory"); Heiser v. Office of the State Fire Marshal, PCB No. 94-377, 1995 Ill. ENV LEXIS 895, at \*9 (Ill.Pol.Control.Bd. Sept. 21, 1995) (striking from an affidavit a statement that was "self-serving and conclusory.")

13. Third, the Hearing Officer must disregard this unsupported allegation of criminal behavior because it is scandalous and impertinent. See Benitez, et al v. KFC National Mgmt. Co., 714 N.E.2d 1002, 1037 (2d Dist. 1999) (finding that “plaintiffs’ allegations in their second amended complaint that employee-defendants sold tainted food to customers and spied on female customers were ‘scandalous and impertinent’” and that it was proper to strike those allegations). Accord, Biggs v. Cummins, 158 N.E.2d 58, 59 (Ill. 1959) (striking the appellant’s brief as containing “scandalous and impertinent material,” where the appellant accused a judge of falsifying a court record, the Attorney General of withholding evidence, the Attorney General’s assistant of “altering the record,” and an assistant Attorney General of making “false and untrue statements to the court.”)

14. The Hearing Officer must disregard these improper statements, which, with no supporting facts whatsoever, conclude the existence of intentional deceit and criminal activity by an employee of Flex-N-Gate.

**III. THE HEARING OFFICER SHOULD DENY COMPLAINANT’S MOTION TO COMPEL.**

**A. The Hearing Officer should Deny Complainant’s Motion to Compel Responses to Requests Nos. 3, 4, 16, 17 and 18.**

15. Complainant first moves the Hearing Officer to compel Flex-N-Gate to produce documents in response to his Requests Nos. 3, 4, 16, 17 and 18.

16. These Requests seek production of:

3. The Emergency Response Plan for the facility pursuant to 29 CFR 1910 as of August 5, 2004.

4. Any amended Emergency Response Plan for the facility pursuant to 29 CFR 1910 since August 5, 2004.

\* \* \*

16. The "Hawwoper 24-hour" training certificate for complainant.

17. Training notebook and materials used by respondent for "Hawwoper 24-hour" training prior to the incident alleged in the complaint.

18. Copies of the "threat letters that if we did not hire this employee back he would make it difficult for Guardian West by calling local and federal agencies", referenced in a fax sent by Denny Corbett to Peggy A Zweber on September 14, 2004.

Complainant's Requests for Production, attached hereto as Exhibit C.

17. Flex-N-Gate objected to each of these Requests for Production:

on the grounds that (1) the document which Request No. 3 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

See Exhibit B.

18. In paragraphs two through five of his Motion to Compel responses to these Requests, Complainant first makes the same arguments he made in his Motion to Compel Respondent to Admit the Truth of Certain Facts. See Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts.

19. In response, Flex-N-Gate hereby incorporates its Response to Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts.

20. Complainant next makes certain unsupported allegations of fact in paragraph six of his Motion to Compel. As discussed above, however, the Hearing Officer must disregard these unsupported allegations of fact, and therefore must deny

Complainant's Motion to Compel to the extent that it relies on these unsupported allegations.

21. Further, even if the Hearing Officer could rely on these unsupported allegations, for the reasons stated in Flex-N-Gate's Response to Complainant's Motion to Compel Respondent to Admit the Truth of Certain Facts, Flex-N-Gate disagrees that any OSHA training materials are relevant to, or could lead to information that is relevant to, this lawsuit.

22. Finally, Complainant argues that the document(s) he seeks in Request No. 18 are relevant to the issue of the credibility of Flex-N-Gate employee Denny Corbett, whom Complainant asserts "[i]t is reasonable to expect . . . will be called as a witness at the hearing." As discussed above, however, Complainant bases this relevance argument solely on unsupported, conclusory statements of fact, which improperly allege criminal conduct by Mr. Corbett. In addition to the fact that the Board's rules prohibit the Hearing Officer from relying on this unverified "support," this argument is wholly insufficient to justify compelling Flex-N-Gate to provide documents which (1) relate solely to the issue of credibility of a witness at a hearing that, after dispositive motions, may not even take place, (2) when there is no admissible evidence that such witness's credibility is at issue, (3) where Complainant does not state that he intends to call this witness if a hearing takes place, only that "[i]t is reasonable to expect" that this witness "will be called."

23. Wherefore, for the reasons stated above, the Hearing Officer should deny Complainant's Motion to Compel as to Requests Nos. 3, 4, 16, 17 and 18.

**B. The Hearing Officer Also Should Deny Complainant's Motion to Compel an Additional Response to Request No. 7.**

24. The Hearing Officer also should deny Complainant's Motion to Compel Flex-N-Gate to respond further to Request No. 7.

25. Complainant's Request for Production No. 7 sought production of "[m]aintenance log and maintenance work orders for the plating line for August 5 through August 8, 2004." See Exhibit C, at ¶7.

26. Flex-N-Gate responded to this Request as follows:

The "maintenance work orders for the plating line" requested in Request No. 7 are produced herewith. Flex-N-Gate does not know what Complainant means by the term "[m]aintenance log . . . for the plating line for August 5 through August 8, 2004," so Flex-N-Gate, in response to Request No. 5 above, has produced all documents in its possession which it thinks Complainant may be requesting by this term. Flex-N-Gate has no other documents relating in any way to the maintenance of the plating line between August 5 and August 8, 2004.

Exhibit B, at ¶7.

27. In his Motion to Compel, Complainant argues:

The first work order produced was initiated by Larry Kelly at 7:28 on 08-05-04. However, Afiba Martin's statement, produced elsewhere, refers to a work order he initiated several hours earlier. That work order has not been produced. Nor do any other work orders appear for third shift of August 4-5, 2004, during which shift the incident happened.

Motion to Compel, at ¶¶7 and 10.

28. First, the Hearing Officer must deny this Motion to Compel because it relies solely on unsupported allegations of fact, in violation of the Board's rules. See discussion above.

29. Second, the Hearing Officer must deny this Motion to Compel because Flex-N-Gate does not have any further documents responsive to this Request for

Production. Flex-N-Gate indicated this in response to Request to Produce No. 7, as noted above. See Exhibit B. Further, in light of Complainant's Motion to Compel, Flex-N-Gate has searched again and has been unable to locate any work order initiated by Afiba Martin for the plating line, or any other work orders "for the third shift of August 4-5, 2004." Affidavit of Jackie Christensen, attached hereto as Exhibit D, ¶3.<sup>1</sup> Again, Flex-N-Gate has produced all "maintenance work orders for the plating line for August 5 through August 8, 2004." Id., ¶4.

30. Accordingly, as Flex-N-Gate has no additional documents responsive to Request No. 7, the Hearing Officer must deny Complainant's Motion to Compel as to this Request as well.

**C. The Hearing Officer Also Should Deny Complainant's Motion to Compel an Additional Response to Request No. 15.**

31. Finally, Complainant moves the Hearing Officer to compel a further response to Request No. 15.

32. Request No. 15 sought production of an "[a]ccount of the incident that is the subject of the complaint delivered to Tony Rice on or about August 9, 2004." Exhibit C, ¶15.

33. In response to this Request, Flex-N-Gate responded:

Flex-N-Gate does not know to what document Request No. 15 refers. If Complainant provides further information regarding this document (e.g., its author), Flex-N-Gate will supplement its response to this Request as appropriate.

Exhibit B, ¶15.

---

<sup>1</sup> The undersigned will submit the original of this Affidavit and the Affidavits of Anthony Rice and Gary Hinton cited below to the Board when they are received.

34. In his Motion to Compel, Complainant states: "The author [of the document at issue] was the complainant, who hand-delivered a written account of the incident to Tony Rice, Plating Manager, on or about August 9, 2004." Motion to Compel, ¶8.

35. First, the Hearing Officer must deny this Motion to Compel because it relies solely on unsupported allegations of fact, in violation of the Board's rules. See discussion above.

36. Second, the Hearing Officer must deny this Motion to Compel because Flex-N-Gate does not have any documents responsive to this Request. In light of Complainant's Motion to Compel, Flex-N-Gate generally, and Mr. Rice specifically, reviewed their files, and were unable to locate any document provided by Complainant to Mr. Rice on August 9, 2004, or on any other date, regarding "the incident." Affidavit of Gary Hinton, attached hereto as Exhibit E, at ¶3; Affidavit of Tony Rice ("Rice Aff."), attached hereto as Exhibit F, at ¶3. Further, Mr. Rice has no recollection of Complainant delivering to him, on August 9, 2004, or on any other date, any document regarding "the incident." Rice Aff., at ¶4. Mr. Rice does have a document which Complainant delivered to him on or about August 9, 2004, but this document relates to the Tank 17 CS pump at the Facility, not to "the incident," Rice Aff., at ¶5, and therefore is not responsive to Request to Produce No. 15.

31. Accordingly, as Flex-N-Gate has no documents responsive to Request No. 15, the Hearing Officer also must deny Complainant's Motion to Compel as to this Request.

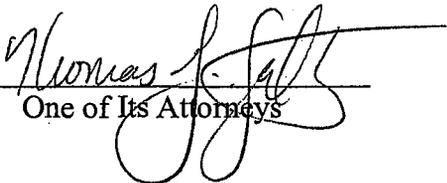
**IV. CONCLUSION**

WHEREFORE, Respondent FLEX-N-GATE CORPORATION respectfully prays that the Hearing Officer deny Complainant's Motion to Compel Production of Documents and grant FLEX-N-GATE CORPORATION such other relief as the Hearing Officer deems just.

Respectfully submitted,

FLEX-N-GATE CORPORATION  
Respondent,

By: \_\_\_\_\_

  
One of Its Attorneys

Dated: May 10, 2005

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

GWST:003/Fil/Response to Motion to Compel - RFPs

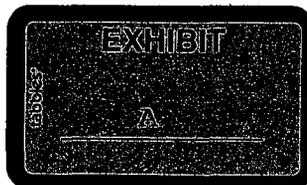
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF THOMAS G. SAFLEY**

Thomas G. Safley, being first duly sworn, deposes and states under oath, and if sworn as a witness, would testify, as follows:

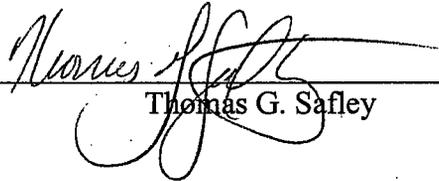
1. I have personal knowledge of the matters set forth in this affidavit.
2. I am an attorney duly licensed in the State of Illinois, and have been retained by respondent Flex-N-Gate Corporation ("Flex-N-Gate") to represent it in this matter.
3. On or about March 19, 2005, Complainant served his Request for Production of Documents ("Request for Production") on Flex-N-Gate, a copy of which Request is attached to Flex-N-Gate's Response to Complainant's Motion to Compel Production of Documents ("Response to Motion to Compel") as Exhibit C.



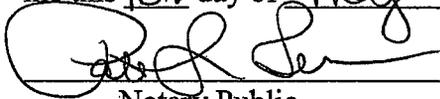
4. On or about April 14, 2005, Flex-N-Gate mailed its Response to Complainant's Request for Production to Complainant, a copy of which Response is attached to Flex-N-Gate's Response to Motion to Compel as Exhibit B.

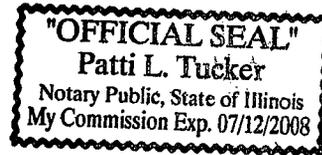
*Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Thomas G. Safley

Subscribed and sworn to before  
me this 10<sup>th</sup> day of May, 2005.

  
\_\_\_\_\_  
Notary Public



GWST:003/Fil/Affidavit of Thomas Safley - Response to MTC - RFPs

COPY

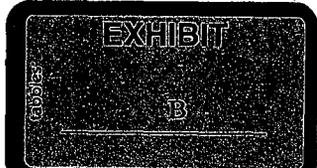
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**FLEX-N-GATE CORPORATION'S RESPONSE TO  
COMPLAINANT'S REQUEST FOR PRODUCTION OF DOCUMENTS**

NOW COMES Respondent, FLEX-N-GATE CORPORATION ("Flex-N-Gate"), and for its Response to Complainant's Request for Production of Documents, states as follows:

1. A copy of the document requested is produced herewith.
2. A copy of the document requested is produced herewith.
3. Flex-N-Gate objects to Request for Production No. 3 on the grounds that (1) the document which Request No. 3 seeks is irrelevant, as it relates only to Occupational Safety and Health Administration ("OSHA") issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.
4. Flex-N-Gate objects to Request for Production No. 4 on the grounds that (1) the document which Request No. 4 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.



5. Flex-N-Gate does not know what Complainant means by "operating log for the plating line." Produced herewith are documents relating to the operation of the plating line between August 4 and 8, 2004, which may be responsive to Request for Production No. 5. If Complainant provides further information regarding what he means by "operating log for the plating line," Flex-N-Gate will respond to Request No. 5's request for "the entire volume of the log."

6. The portions of "the Plating lab notebook" requested in Request for Production No. 6 which include the dates August 4 through August 8 are produced herewith. Flex-N-Gate objects to Request No. 6 to the extent that it seeks production of notebooks dated before or after the dates of the notebooks produced, on the grounds that such earlier and later notebooks are irrelevant and that it would be unduly burdensome for Flex-N-Gate to produce them.

7. The "maintenance work orders for the plating line" requested in Request No. 7 are produced herewith. Flex-N-Gate does not know what Complainant means by the term "[m]aintenance log . . . for the plating line for August 5 through August 8, 2004," so Flex-N-Gate, in response to Request No. 5 above, has produced all documents in its possession which it thinks Complainant may be requesting by this term. Flex-N-Gate has no other documents relating in any way to the maintenance of the plating line between August 5 and August 8, 2004.

8. Flex-N-Gate objects to Request for Production No. 8 to the extent that it seeks the discovery of documents which are protected by the attorney-client privilege. All non-privileged documents responsive to Complainant's Request for Production No. 8 are produced herewith.

9. Copies of the documents requested are produced herewith.
10. Copies of the documents requested are produced herewith.
11. Flex-N-Gate has no documents responsive to Request for Production No. 11.
12. Copies of the documents requested are produced herewith.
13. Copies of the documents requested are produced herewith.
14. Copies of the documents requested are produced herewith.
15. Flex-N-Gate does not know to what document Request No. 15 refers. If Complainant provides further information regarding this document (e.g., its author), Flex-N-Gate will supplement its response to this Request as appropriate.

16. Flex-N-Gate objects to Request for Production No. 16 on the grounds that (1) the document which Request No. 16 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

17. Flex-N-Gate objects to Request for Production No. 17 on the grounds that (1) the document which Request No. 17 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

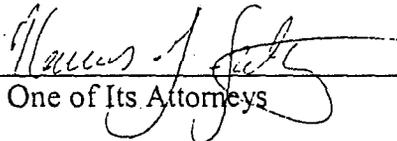
18. Flex-N-Gate objects to Request for Production No. 18 on the grounds that (1) the document which Request No. 18 seeks is irrelevant, as it relates only to OSHA issues, and (2) Complainant has filed a complaint against Flex-N-Gate before OSHA, and

it is improper for Complainant to use discovery in this litigation to seek information regarding that OSHA matter.

Respectfully submitted,

FLEX-N-GATE CORPORATION,  
Respondent,

By: \_\_\_\_\_

  
One of Its Attorneys

Date: April 14, 2005

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

GWST:003/Fil/Response to RFP



9. Copies of hazardous waste manifests initiated by the facility during July, August and September, 2004.
10. Material Safety Data Sheets for the following:
  - a. Bulk sulfuric acid used by the facility in August, 2004.
  - b. Tank 20 additive "TA"
  - c. Tank 20 additive HSA-90 or "High Sulfur Additive-90".
11. Copies of all correspondence with the Illinois Environmental Protection Agency concerning the incident alleged in the complaint.
12. Copies of all correspondence with the Occupational Safety and Health Administration (OSHA) concerning the incident alleged in the complaint.
13. Copies of all correspondence with the Illinois Environmental Protection Agency concerning the RCRA permit status or claims of exemption from the RCRA permit requirement.
14. Copies of all OSHA notices posted in connection with the incident alleged in the complaint.
15. Account of the incident that is the subject of the complaint delivered to Tony Rice on or about August 9, 2004.
16. The "Hazwoper 24-hour" training certificate for complainant.
17. Training notebook and materials used by respondent for "Hazwoper 24-hour" training prior to the incident alleged in the complaint.
18. Copies of the "threat letters that if we did not hire this employee back he would make it difficult for Guardian West by calling local and federal agencies", referenced in a fax sent by Denny Corbett to Peggy A. Zweber on September 14, 2004.

Morton F. Dorothy  
804 East Main  
Urbana IL 61802  
217/384-1010

Morton F. Dorothy  
Morton F. Dorothy, Complainant

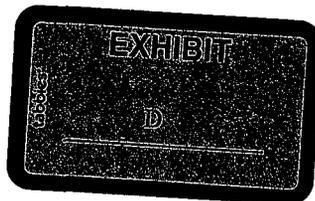
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF 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. In light of Complainant's Motion to Compel Production of Documents, I have searched Flex-N-Gate's records again and have been unable to locate any work order initiated by Afiba Martin for the plating line between August 5 and 8, 2004, or any other work orders "for the third shift of August 4-5, 2004" other than the work order previously produced to Complainant.



4. Flex-N-Gate has produced to Complainant all "maintenance work orders for the plating line for August 5 through August 8, 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.**

*Jackie Christensen*  
\_\_\_\_\_  
Jackie Christensen

Subscribed and sworn to before  
me this 10 day of May, 2005.

*Vickie L. Patton*  
\_\_\_\_\_  
Notary Public



GWST:003/Fil/Affidavit of Jackie Christensen - Response to MTC - RFPs

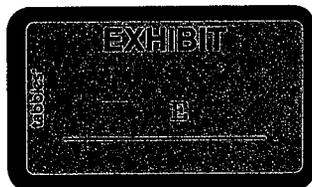
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF GARY HINTON**

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

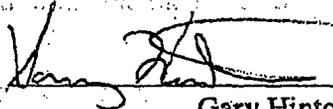
1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by Flex-N-Gate Corporation ("Flex-N-Gate") as Human Resources Manager at the facility at issue in the above-captioned matter.
3. In light of Complainant's Motion to Compel Production of Documents, I have reviewed Flex-N-Gate's personnel files relating to Complainant, and I was unable to locate any document hand-delivered by Complainant to Mr. Tony Rice of Flex-N-Gate



on August 9, 2004, or on any other date, regarding "the incident" at issue in the above-captioned matter.

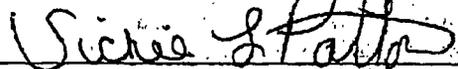
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FURTHER AFFIANT SAYETH NOT.

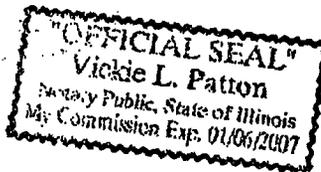


Gary Hinton

Subscribed and sworn to before me this 10 day of May, 2005.



Notary Public



GWST:003/Fi/Affidavit of Gary Hinton - Response to MTC - RFPs

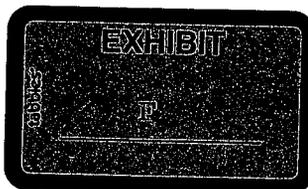
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
CHAMPAIGN COUNTY, ILLINOIS

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

**AFFIDAVIT OF ANTHONY RICE**

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

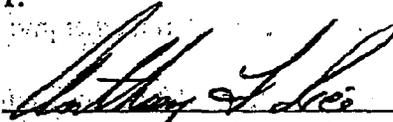
1. I have personal knowledge of the matters set forth in this affidavit.
2. I am employed by Flex-N-Gate Corporation ("Flex-N-Gate") as Plating Manager at the facility at issue in the above-captioned matter.
3. In light of Complainant's Motion to Compel Production of Documents, I have reviewed my files, and I was unable to locate any document hand-delivered by Complainant to me on August 9, 2004, or on any other date, regarding "the incident" at issue in the above-captioned matter.
4. Further, I have no recollection of Complainant hand-delivering to me, on August 9, 2004, or on any other date, any document regarding "the incident."



5. I do have a document which Complainant delivered to me on or about August 9, 2004, but this document relates to the Tank 17 CS pump, not to "the incident."

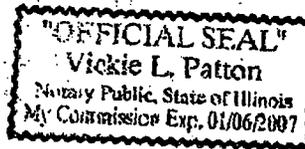
*Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Anthony Rice

Subscribed and sworn to before  
me this 10 day of May, 2005.

  
\_\_\_\_\_  
Notary Public



GWST:003/Fil/Affidavit of Anthony Rice - Response to MTC - RFPs