

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **FLEX-N-GATE CORPORATION'S RESPONSE TO COMPLAINANT'S REQUEST FOR PRODUCTION OF MEDICAL SURVEILLANCE RECORDS**, a copy of which is herewith served upon you.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

Dated: October 19, 2006

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

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

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, certify that I have served the attached
FLEX-N-GATE CORPORATION'S RESPONSE TO COMPLAINANT'S REQUEST
FOR PRODUCTION OF MEDICAL SURVEILLANCE RECORDS upon:

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

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

via electronic mail on October 19, 2006; and upon:

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

by depositing said documents in the United States Mail in Springfield, Illinois, postage
prepaid, on October 19, 2006.

/s/ Thomas G. Safley
Thomas G. Safley

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| MORTON F. DOROTHY, |) | |
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| 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 MEDICAL SURVEILLANCE RECORDS

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

GENERAL OBJECTIONS

1. Flex-N-Gate objects to Complainant's Request for Medical Records on the grounds that it seeks the production of information that is irrelevant and is not otherwise calculated to lead to the discovery of information that would be relevant and admissible at hearing, in violation of the Illinois Pollution Control Board's ("Board") procedural rules at 35 Ill. Admin. Code § 101.616(a).

2. Flex-N-Gate objects to Complainant's Request for Medical Records on the grounds that the requested documents are privileged and thus protected from disclosure and as such are not subject to disclosure pursuant to Illinois Supreme Court Rule 201.

3. Flex-N-Gate objects to Complainant's Request for Medical Records on the grounds that Complainant's Request for Medical Records does not conform to the requirements of Illinois Supreme Court Rule 214. Specifically, Complainant's Request

for Medical Records is not properly formatted and does not inform Flex-N-Gate of its obligation to respond as required by Illinois Supreme Court Rule 214.

4. Flex-N-Gate objects to Complainant's Request for Medical Records on the grounds that Complainant has requested this information after the time for written discovery has elapsed. On December 13, 2005, the Hearing Officer entered an Order stating that the deadline for written discovery in this matter was February 14, 2006. Complainant's Request for Medical Records was received by Flex-N-Gate on September 25, 2006.

RESPONSE TO REQUEST FOR MEDICAL RECORDS

1. Flex-N-Gate hereby restates its general objections above in response to Complainant's Request for Medical Records. Flex-N-Gate further objects to Complainant's Request for Medical Records on the grounds that to comply with Complainant's request would subject Flex-N-Gate to legal liability arising from the unauthorized release of medical information. Specifically, Flex-N-Gate has reviewed 29 C.F.R. § 1910.120(f)(2)(ii) (the statutory provision cited by the Complainant in his Request for Medical Records) and has been unable to find any language contained in either the provision or the Occupational Health and Safety Act, of which the provision is a part, that purports to viciate the protected and privileged status of the information requested. Without waiving these objections, Flex-N-Gate states that, to the extent that

Complainant's Request for Medical Records seeks medical records pertaining to
Complainant, Flex-N-Gate is unaware of any documents responsive to this request.

Respectfully submitted,

FLEX-N-GATE CORPORATION,
Respondent,

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

Date: October 19, 2006

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GWST:003/Fil/Response to RFP - Medical