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STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF)
ILLINOIS,)
Complainant,)
)
) PCB 04-16
) (Enforcement – Air)
v.)
)
PACKAGING PERSONIFIED, INC., an)
Illinois Corporation)
Respondent.)

RESPONDENT'S MOTION TO COMPEL RESPONSES TO WRITTEN DISCOVERY

Respondent, Packaging Personified, Inc. ("Packaging"), by its attorneys Gardner Carton & Douglas LLP, hereby moves pursuant to 35 IAC 101.616(b) & (d) for entry of an Order compelling Complainant, the People of the State of Illinois ("Complainant"), to provide answers and documents in response to certain of Respondent's First Set of Interrogatories and Requests for Production of Documents ("Respondent's Discovery" or the "Discovery Requests").

On January 14, 2005, Packaging served Complainant with its Discovery Requests, and Complainant served written responses on March 17, 2005. In its written responses, Complainant refused to provide the discovery requested in Interrogatories 6 through 12 and Document Requests 13 through 18, asserting that the information sought in those Discovery Requests "does not relate to any claim or defense" in this case. On April 20, 2005, counsel for Packaging and for Complainant conferred by telephone regarding Respondent's Discovery, and the Parties have continued to confer informally on this issue since that telephone conference. Counsel have in good faith attempted to negotiate a resolution but, to date, have been unable to resolve this discovery impasse. Accordingly, Packaging is bringing this motion to compel responses to Interrogatories 6 through 12 and Document Requests 13 through 18.

“Illinois Supreme Court rules permit liberal pretrial discovery.” *DuFour v. Mobil Oil Corp.*, 301 Ill. App. 3d 156, 160, 703 N.E.2d 448, 451 (1st Dist. 1998). Further, the Board’s rules provide that “[a]ll relevant information and information *calculated to lead to relevant information* is discoverable.” 35 IAC 101.616(a) (emphasis added); *see also DuFour*, 301 Ill. App. 3d at 160, 703 N.E.2d at 451.

Interrogatories 6 through 12 and Document Requests 13 through 18 request information relating to the Flexographic Printing Rules, 35 IAC 218.401 *et seq.*, which resulted from the rulemaking proceeding designated R93-9. The Flexographic Printing Rules are certainly relevant to this matter, as Complainant’s claims are based on allegations regarding emissions from Packaging’s flexographic printing presses, and several counts in the First Amended Complaint cite directly to the Flexographic Printing Rules. Further, the rulemaking proceeding R93-9, the timing of that proceeding relative to the timing of the alleged violations, and Packaging’s ability to participate in R93-9 and seek a variance or adjusted standard are all relevant to whether Complainant can establish both liability and appropriateness of the proposed penalty. More specifically:

- Interrogatories 6, 7, and 8 seek the identity of entities who received notice or other correspondence regarding R93-9. Document Request 13 asks for comments and other documents relating to R93-9, and Document Requests 14 and 15 asks for documents and notice provided to Packaging related to R93-9. These Discovery Requests are relevant because Packaging is entitled to determine if other companies received notice or other documents regarding the Flexographic Printing Rules that Packaging did not receive, and if other companies were able to participate in R93-9 at a level of involvement that was not available to Packaging.
- Interrogatories 9 and 10 ask for information on air regulation and permitting pertaining to companies in the same industry as Packaging Personified. Document Requests 16¹ ask for documents relating to adjusted standards and variances sought by companies in the same industry as Packaging Personified.

¹ Note that Packaging erroneously numbered two consecutive Document Requests both as number 16. Complainant has objected to both requests, and Packaging is requesting responses for both in this motion.

These Discovery Requests are relevant to the extent that other similarly-situated companies received regulatory relief that Packaging could also have received.

- Interrogatories 11 and 12 and Document Requests 17 and 18 request information USEPA and the State of Illinois involvement with the Flexographic Printing Rules, including enforcement of the Rules and SIP approval of variances and adjusted standards. These Discovery Requests are relevant because the information sought is relevant to Complainant's stance in this case relative to other enforcement cases or petitions relating to the Flexographic Printing Rules.

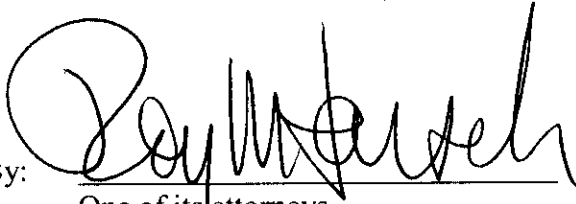
In its objections to Packaging's Interrogatories 6 through 12 and Document Requests 13 through 18, Complainant states that the information sought is not relevant. However, to the contrary, as demonstrated above, Packaging is entitled to this information because it is relevant to the regulatory context of Complainant's entire case.

For the foregoing reasons, Respondent Packaging Personified, Inc., respectfully requests that the Board enter an Order compelling Complainant to serve appropriate responses to Respondent's Discovery, specifically Interrogatories 6 through 12 and Document Requests 13 through 18.

Dated: January 31, 2006

Respectfully Submitted,

PACKAGING PERSONIFIED, INC.

By: 
One of its attorneys

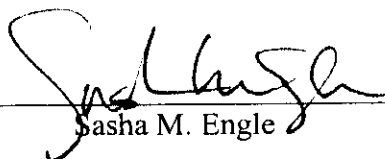
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Respondent's Motion to Compel Responses to Written Discovery** was filed via hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties below by U.S. First Class Mail on **Tuesday, January 31, 2006.**

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