

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

AUG 28 2006

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
Complainant, )  
 )  
v. )  
 )  
PACKAGING PERSONIFIED, INC., an )  
Illinois Corporation )  
Respondent. )

PCB 04-16  
(Enforcement - Air)

**NOTICE OF FILING**

**TO:**

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph Street  
Chicago, IL 60601

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph Street  
Chicago, IL 60601

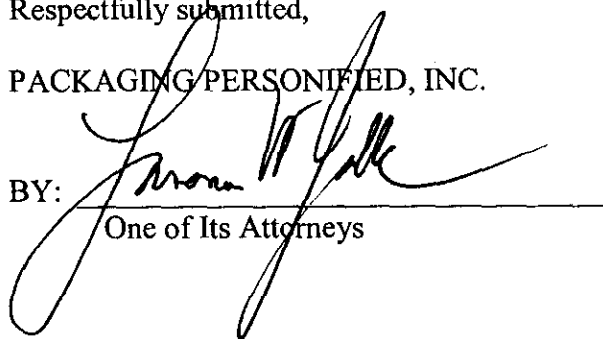
Christopher J. Grant  
Office of the Attorney General  
188 West Randolph  
20<sup>th</sup> Floor  
Chicago, IL 60601

**PLEASE TAKE NOTICE** that on **Tuesday, August 29, 2006**, we filed the attached **Motion to For Interlocutory Appeal From Hearing Officer Order Dated June 28, 2006 Denying Respondent's Motion to Compel Discovery** via hand delivery with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

BY:

  
\_\_\_\_\_  
One of Its Attorneys

Roy M. Harsch  
Gardner Carton & Douglas LLP  
191 N. Wacker Drive  
Suite 3700  
Chicago, Illinois 60606-1698  
(312) 569-1000

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS  
Pollution Control Board

**MOTION TO FOR INTERLOCUTORY APPEAL  
FROM HEARING OFFICER ORDER DATED JUNE 28, 2006  
DENYING RESPONDENT'S MOTION TO COMPEL DISCOVERY**

Respondent, Packaging Personified, Inc. ("Packaging"), by its attorneys Gardner Carton & Douglas LLP, pursuant to Sections 101.500, 101.504 and 101.518 of the Illinois Pollution Control Board's Procedural Rules, 35 IAC 101.500, 101.504 and 101.518, moves for an Interlocutory Appeal from an Order of the Hearing Officer in this matter dated June 28, 2006, denying Packaging's Motion to Compel Discovery. In support of its Motion for Interlocutory Appeal, Packaging states as follows:

**INTRODUCTION**

This matter arises from a 12-count Complaint filed on August 5, 2003 by the Attorney General of the State of Illinois ("Complainant") pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002), against Packaging for alleged violations of the Act concerning emission of Volatile Organic Materials ("VOMs") and Hazardous Air Pollutants ("HAPs") from Packaging's bag extruding and printing operations. Packaging answered the Complaint on January 16, 2004 and the parties engaged in discovery pursuant to the order of the Hearing Officer.

On January 14, 2005, Packaging served Complainant with its Discovery Requests (copy attached as Exhibit A). In a nutshell, Packaging's discovery requests were designed to obtain information regarding the Flexographic Printing Rules, 35 IAC 218.401 *et seq.*, which resulted from the rulemaking proceeding designated R93-9. A primary component of Packaging's defense in this concerns the issue of the availability of an adjusted standard for certain of Packaging's emissions. While several other companies with virtually identical issues were allowed to apply for, and received, site-specific relief, such relief was denied to Packaging on the basis of lack of timeliness in applying for such relief. Packaging's motive for requesting this discovery was 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.

Complainant served written responses on March 17, 2005 (Exhibit B). 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.

Counsel for both parties conferred but were unable to negotiate a resolution to resolve the discovery impasse. Consequently, on January 31, 2006, Packaging moved to compel responses to Interrogatories 6 through 12 and Document Requests 13 through 18. On February 16, 2006, the Complainant filed a response, and Packaging filed a reply on April 12, 2006.

On June 28, 2006, the Hearing Officer entered an Order denying Packaging's Motion to Compel (Exhibit C). The Order summarily held that the "rulemaking process itself is immaterial and irrelevant to the violations alleged in the complaint at bar." In addition, the Order stated that

because much of the information was available in the Board's public file, compelling the Complainant to respond would be overly burdensome.

In light of the denial of its requested discovery by the Hearing Officer, Packaging requests that the Board consider the denial of Packaging's Motion to Compel Discovery pursuant to Section 101.518, and enter an order overruling the Hearing Officer's decision, and remanding with instructions for the Hearing Officer to grant Packaging's Motion to Compel Discovery.

### ARGUMENT

#### **A. Under Illinois' Liberal Discovery Standards, the Hearing Officer Erred By Finding the Requested Discovery Irrelevant to the Case at Bar**

It is a bedrock principle of Illinois procedural law that the "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. As noted above, Packaging intends to raise the issue of the non-availability of an adjusted standard for certain of Packaging's emissions, where such relief was given to several other companies with virtually identical issues. Because such site-specific relief was denied to Packaging on the basis of lack of timeliness in applying for such relief, 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 16<sup>1</sup> ask for documents relating to adjusted standards and variances sought by companies in the same industry as Packaging Personified. 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 stated 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.

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<sup>1</sup> Note that Packaging erroneously numbered two consecutive Document Requests both as number 16. Complainant objected to both requests, and Packaging requested responses for both in its Motion to Compel.

Packaging respectfully believes that as part of its defense, it should be allowed to show what entities received notice of the adoption of these Flexographic rack regulations, including similarly situated Flexographic printers that had not complied with the Flexographic regulations adopted in R93-9. While these similarly situated printers had not complied with the regulations, they were nevertheless were allowed to pursue variances and adjusted standard relief with the apparent approval by the Illinois Environmental Protection Agency, and without any enforcement actions being brought by Complainant. Thus, the questions of notice, who was involved in rack regulations, subsequent IEPA discussions with similar situated Flexographic printers, and the decisions to authorize relief without accompanying enforcement actions is directly relevant to Packaging's defense to the enforcement action brought in this case, including but not limited to the issue of the gravity and appropriateness of the demanded penalty.

Under Illinois' liberal discovery standards, such discovery is more than fair game, and the Hearing Officer erred in denying Packaging's Motion to Compel this discovery.

**B. The Requested Discovery is Narrowly Tailored, and Given the Gravity of the Penalty Sought by the State in This Case, Not Unduly Burdensome**

In its response to Packaging's Motion to Compel, Complainant argued that the requested information is overbroad and overly burdensome because it would require Complainant to evaluate the rulemaking records as well as other proceedings. Complaint also noted that it had produced "thousands" of pages of documents in response to other of Packaging's discovery requests to which Complainant did not object. Further, Complainant objected that the discovery requests would compel Complainant to produce information not in its possession and in the possession of third parties. Finally, Complainant estimated that it would take approximately 37 hours to compile and respond to the requested discovery. Complainant's position is untenable for the reasons set forth below.

First, it is clear that from the above-referenced discovery requests (attached as Exhibit A and summarized above) that Packaging's requests are narrowly tailored to obtain only that discovery which is reasonable, and directly relevant to one of its anticipated defenses. Even Complainant does not argue that Packaging's discovery is meant solely for the purposes of harassment or delay, and Complainant does not and cannot suggest any modifications to Packaging's requests that would make them less overbroad.

Second, the issue of how many documents were produced by Complainant in response to other document requests not at issue in Packaging's Motion to Compel is irrelevant, and merely a smokescreen to distract from Complainant's outright refusal to produce any of the documents at issue now. Sufficiency of discovery responses is not something to be evaluated on a "weight" basis, nor can it be measured against a standard of substantial completeness.

Next, the notion that Packaging expected or was entitled to compel Complainant to produce documents not within its possession, custody or control was never raised or suggested by Packaging, and is simply specious.

Finally, the fact that it is estimated that it will take 37 hours (according to Complainant) to search for this information is unpersuasive. Even if this estimate is correct, any burden placed on Complainant by having to spend 37 hours is a direct result of the baseless allegations raised in the Complaint and the relief sought, and therefore is completely reasonable. Complainant is seeking thousands and thousands of dollars in penalty as a result of allegations raised in 12 counts in a 40-plus page Complaint. While it goes without saying that Complainant will have to devote some effort to responding to the requested discovery, it is well within the bounds of accepted litigation practice and does not rise to the level of burdensomeness needed to foreclose Packaging's right to its requested discovery.

WHEREFORE, for the foregoing reasons, Respondent Packaging Personified, Inc., respectfully requests that the Board enter an Order overruling the June 28, 2006 Order of the Hearing Officer and compelling Complainant to serve appropriate responses to Respondent's Discovery, specifically Interrogatories 6 through 12 and Document Requests 13 through 18.

Dated: August 29, 2006

Respectfully Submitted,

PACKAGING PERSONIFIED, INC.

By: 

One of its attorneys

Roy M. Harsch  
GARDNER CARTON & DOUGLAS, LLP  
191 N. Wacker Drive, Suite 3700  
Chicago, Illinois 60606-1698  
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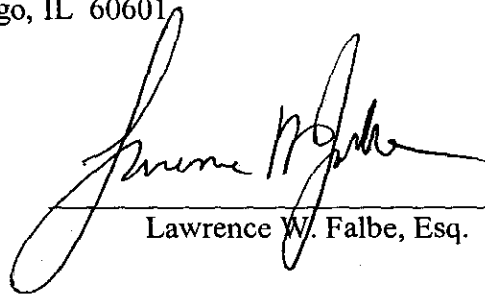
**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **Motion to For Interlocutory Appeal From Hearing Officer Order Dated June 28, 2006 Denying Respondent's Motion to Compel 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, August 29, 2006**.

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph Street  
Chicago, IL 60601

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph Street  
Chicago, IL 60601

Christopher J. Grant  
Office of the Attorney General  
188 West Randolph  
20<sup>th</sup> Floor  
Chicago, IL 60601



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Lawrence W. Falbe, Esq.

# Exhibit A

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

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

**RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO COMPLAINANT**

Respondent, Packaging Personified, Inc., by its attorneys, Gardner Carton & Douglas LLP, submits this First Set of Interrogatories and First Request for Production of Documents to Complainant to be answered fully in writing and under oath pursuant to Illinois Supreme Court Rules 213 and 214 and 35 Illinois Administrative Code sections 101.616 and 101.620.

**DEFINITIONS AND INSTRUCTIONS**

1. These Interrogatories and Document Requests are continuing so as to require supplemental answers, as specified in Rule 213(i) of the Illinois Supreme Court Rules and the Illinois Pollution Control Board Rule at 35 IAC 101.616(h), if you, or any person acting on your behalf, obtains additional information called for by the Interrogatories or Document Requests.

2. **Claim of Privilege.** If any information or documents are withheld because the interrogatory is objected to on grounds of attorney-client privilege, work product or any other grounds, please specify with particularity:

- (a) The portion of the interrogatory to which the withheld information or document is responsive;
- (b) The parties participating in the production, conversation or creating the document, i.e., author, originator, addressee, recipient, and copyee;
- (c) Date of origin or preparation of the document;

- (d) The character of the information or document and its subject matter, as well as a summary of its contents;
- (e) Length in pages of any relevant document;
- (f) The file in which any relevant document was located or from which it is being withheld;
- (g) The present location of any relevant document;
- (h) Custodian of any relevant document;
- (i) The number of copies of any relevant document being withheld; and
- (j) The factual and legal basis upon which a privilege is claimed and/or any other reason for withholding the information or document.

3. **“Document”**. As used herein, the term “document” or “documents” is used in the broadest possible sense, as defined in Rule 201(b)(1) of the Illinois Supreme Court Rules, and means without limitation all written, printed, typed, photostatic, photographed, recorded, machine readable or graphic matter, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or any estimation thereof however produced or reproduced of every kind and description in your actual or constructive possession, custody, care or control. Without limiting the foregoing, the term “document” shall include the original (or copies where the original is not available) and any copy that differs from the original or other versions or drafts of the document, such as copies containing notations, insertions, corrections or any other variations. Without limiting the generality of the foregoing, “document” shall also include correspondence, letters, memoranda, accounting and financial records, financial statements, notes, diaries, summaries, statements, financial analyses, loan titles, computation sheets, budgets, expense reports, investigation reports, field notes, opinions, forecasts, audits, projections, trade letters, press releases, comparisons, telegrams, drafts, work papers, microfilm, paper and magnetic tapes, computer memory storage devices such as floppy disks or hard disks, sound and video recordings and transcripts of such recordings, charts, computer cards and printouts, computer memory and data bases, e-mail or electronic mail or messages of any kind, minutes, publications, calendars, telephone pads, bulletins, directives, pamphlets, manuals, books diaries, periodicals, photographs, memorials of telephone conversations or meetings or conferences, interoffice communications, records, reports, studies estimates, contracts, amendments, and addenda to such contracts, agreements, invoices, receipts, ledgers, books of account, analytical records, journals, logs, statistical records, costs sheets, time sheets, photographs in job or transaction files, magazines, newspapers, booklets, brochures, pamphlets, circulars, notices, drawings, diagrams, tables, instructions, notes of minutes, questionnaires, surveys, graphs, and any preliminary versions of drafts of the foregoing.

4. **“Person”**. As used herein, the term “person” or “persons” means any natural person, sole proprietorship, firm, corporation, partnership, joint venture, group, association, organization, trust, government or governmental agency, group or any other form of business

activity and any other legal entity. Any reference to a “person” shall mean that “person” and all affiliates, divisions, controlled companies, subsidiaries or otherwise related entities and all to his, her or its current and former officers, directors, employees, agents, representatives, attorneys, and accountants.

5. **“Relate”**. As used herein, the term “relate” or “relating to” any given subject means in whole or part constituting, containing, defining, describing, discussing, detailing, embodying, reflecting, identifying, mentioning, stating, referring to, demonstrating, evidencing, alleging to referring, hinting at, dealing with, underlying, supporting or in any way pertaining, concerning or being relevant to that subject, and is meant to include, among other documents, all documents consisting of, constituting, containing, referring to, discussing, describing, concerning, reflecting or being legally, logically or factually connected in any way with the matter discussed. This term includes, but is not limited to, information underlying, supporting, or necessary for the understanding of any document relating to each interrogatory or answer thereto.

6. **“Communications”**. As used herein, the term “communication” is used in the broadest possible sense and refers, without limiting the generality of this meaning, to any and all forms of transferring information, including discussion, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, discussions, contacts, proposals, memoranda, letters, telegrams, telexes, cables, telephone calls, electronic communication, or any other communication, or notes thereof, or document relating thereto, whether formal or informal.

7. **“Identify”**. As used herein, the term “identify,” when used with reference to an individual natural person, means that the answer should include the full name, address and telephone number of the person, as well as the name and address of the person’s most recent known employer. When used in reference to any other legal entity, the term “identify” means that the answer should include the most recent known name and address of that entity. When used with reference to a document, the term “identify” means that the answer should include a description of the nature and subject matter of the document, the dates of its preparation, the identify of the author and recipient, and the present location of the document. When used with reference to any other form of communication, the term “identify” means that the answer should include a description of the nature and subject matter of the communication, the date of the communication, and the identity of the persons who participated in or were present at any part of the communication. When used with reference to facts supporting the allegation, the term “identify” means that the answer should include every act, occurrence, transaction, statement, communication or conduct which you claim supports the allegation and every document which you claim supports the allegations.

8. **“Basis”**. As used herein, the term “basis” shall mean that the answer should include the specific facts and legal or business principles which support or tend to support the allegation made.

9. **“And” and “Or”**. As used herein, “and” and “or” shall be construed interchangeably so as to bring within the scope of this request any facts which might otherwise be construed as outside the scope.

10. **“You” or “your”**. As used herein, the terms “you” and “your” refers to the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, State of Illinois employees, contractors, agents, and attorneys and any other persons acting or purporting to act on behalf of the People of the State of Illinois.

11. **“Packaging Personified”**. As used herein, the term “Packaging Personified” refers to Packaging Personified, Inc. or any of its officers, directors, employees, contractors, or agents.

12. **“IEPA”**. As used herein, the term “IEPA” refers to the Illinois Environmental Protection Agency or any of its current or former employees, including but not limited to Director Renee Cipriano, Dave Kolaz, Bharat Mathur, Julie Armitage, David Bloomberg, and Kevin Mattison.

13. **“IPCB”**. As used herein, the term “IPCB” refers to the Illinois Pollution Control Board or any of its current or former employees.

14. **“USEPA”**. As used herein, the term “USEPA” refers to the United States Environmental Protection Agency or any of its current or former employees.

15. **“Act”**. As used herein, the “Act” shall refer to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*

16. **“Complaint”**. As used herein, the term “Complaint” shall mean the administrative complaint filed by the Illinois Attorney General in this matter captioned *People of the State of Illinois v. Packaging Personified, Inc.*, PCB 04-16.

17. **“VOM” or “VOC”**. As used herein, the terms “VOM” and “VOC” refer interchangeably to volatile organic material or volatile organic compounds as defined by or under the Act.

18. **“Facility”**. As used herein, the term “Facility” refers to Packaging Personified Inc.’s operations located at 246 Kehoe Boulevard, Carol Stream, DuPage County, Illinois.

19. **“Flexographic Printing Rules”**. As used herein, the term “Flexographic Printing Rules” refers to the IPCB rules at 35 IAC 218.401 *et seq.*, which regulate organic material emissions from flexographic and rotogravure printing operations in the Chicago area.

20. **“R93-9” or “Rulemaking”**. As used herein, the terms “R93-9” or “Rulemaking” refers to the rulemaking before the Illinois Pollution Control Board captioned as R93-9 that resulted in the adoption of the Flexographic Printing Rules found at 35 IAC 218.401 *et seq.*

21. **“SIP”**. As used herein, the term “SIP” refers to the USEPA-approved Illinois State Implementation Plan for regulation under the Clean Air Act in Illinois.

22. **Other terms.** As used herein, the singular shall be deemed to include the plural; the use of one gender shall include all genders, as appropriate in context; and the present tense shall include the past tense.

23. **“Time Period”.** The time period referred to in these interrogatories, unless specifically indicated to the contrary, is from January 1, 1989 to the present.

### INTERROGATORIES

1. Identify the person or persons providing the answers to these Interrogatories, and, for each answer, identify the information provided by each such person.

2. Identify each and every basis in support of your allegations in Paragraph 5 of Count I of the Complaint that the Facility has the potential or capacity to emit in excess of 25 tons of VOM per year” and that the Facility’s “actual 2002 VOM emissions were at least 44 tons.”

3. Identify each and every basis in support of your allegations in Paragraphs 18 and 19 of Count V.

4. Identify each and every basis in support of your allegation in Paragraph 14 that the Facility emitted more than 10 tons of VOM during the five month period from May 1 until September 30 for each year from 1997 until the filing of the Complaint.

5. Identify each and every basis in support of your allegations in Paragraphs 10, 11, 17, and 19 of Count VII of the Complaint.

6. Identify all entities who were listed on any IPCB notice lists and service lists for R93-9.

7. Identify all entities who, prior to or during the pendency of R93-9 or after adoption of the Flexographic Printing Rules, received correspondence from or engaged in communications with IEPA related to R93-9 or the Flexographic Printing Rules.

8. For each entity identified in response to either Interrogatory 6 or 7, provide the following information:

- a. Identify any communications between the entity and IEPA relating to R93-9 or the Flexographic Printing Rules.
- b. Describe the type of business, including the types of product printed, the inks used, whether the inks used are water-based or solvent-based, and the processes used by the entity.
- b. Identify the control equipment used by the entity to comply with the Flexographic Printing Rules, the cost associated with the control equipment, and the date the control equipment was employed.

9. Identify each and every communication, related to clean air regulation with respect to permitting, Flexographic Printing Rules, or emissions reduction systems, between IEPA and the following companies:

- a. Formel Industries, Inc.
- b. Vonco Products, Inc.
- c. Bema Film Systems, Inc.

10. Identify each and every flexographic or rotogravure printer business in the Chicago area, as that area is described at 35 IAC 218.100(a).

11. Identify each and every communication between USEPA and the State of Illinois or any Illinois state agency relating to the Flexographic Printing Rules, including but not limited to promulgation, SIP approval, and enforcement of the Flexographic Printing Rules and variances and adjusted standards from the Flexographic Printing Rules.



12. Identify each and every communication between and among IEPA, USEPA, and the companies listed in Interrogatory 9 relating to USEPA approval as SIP revisions of the adjusted standards from the Flexographic Printing Rules granted to those companies, captioned before the IPCB as AS 00-11, AS 00-12, and AS 00-13.

13. Identify each and every basis in support of the amount of penalty you are seeking, including but not limited to:

- a. The determination of the amount of economic benefit that you assert Packaging Personified received as a result of the non-compliance alleged in the Complaint.
- b. The basis for the economic benefit determination, including all informational inputs, all formulas used, any software used to calculate the economic benefit, and all assumptions of the economic benefit model used.
- c. Identify the individuals involved in determining the penalty amount and economic benefit amount.

14. Identify all witnesses whom you intend to have testify at the hearing, including the following information:

- a. For each lay witness, identify the subjects on which the witness will testify.
- b. For each independent expert witness, identify the subjects on which the witness will testify and opinions you expect to elicit.
- c. For each controlled expert witness, identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the

witness and the bases therefor; (iii) the qualifications of the witness; and  
(iv) any reports prepared by the witness about the case.

### **DOCUMENT REQUESTS**

1. All documents relating to the allegations in the Complaint.
2. All documents identified in your responses to Interrogatories 1-14 or reviewed in the course of responding to Interrogatories 1-14.
3. All documents you intend to use at any depositions in this case.
4. All documents you intend to offer as evidence at the hearing in this case.
5. All documents you intend to use in any manner or for any purpose at the hearing in this case.
6. All photographs, models, slides, films, videotape, drawings or other depictions of the Facility.
7. All documents referring or relating to any communications between IEPA and Packaging Personified.
8. All documents relating to submittals to IEPA from Packaging Personified, including but not limited to permit applications, reports, and other information.
9. All documents relating to any inspection or site visit performed at the Facility by IEPA or any other State of Illinois employee or agency.
10. All documents referring or relating to communications of any kind within IEPA concerning the Facility or the allegations of the Complaint.
11. All documents referring or relating to communications of any kind between IEPA and any third party concerning the Facility or the allegations of the Complaint.

12. All documents relating to your computation, calculation or estimation of a penalty for the violations alleged in the Complaint.

13. All documents relating to R93-9, including but not limited to comments received during the notice-and-comment period.

14. All documents relating to R93-9 provided by IEPA to Packaging Personified either before the Rulemaking, during the pendency of R93-9, or after adoption of the Flexographic Printing Rules.

15. All documents relating to any notice provided by the IPCB to Packaging Personified related to R93-9.

16. All documents relating to the following Adjusted Standard Petitions before the IPCB:

- a. In the Matter of Petition of Formel Industries, Inc. for an Adjusted Standard, AS 00-13
- b. In the Matter of Petition of Vonco Products, Inc. for an Adjusted Standard, AS 00-12
- c. In the Matter of Petition of Bema Film Systems, Inc. for an Adjusted Standard, AS 00-11

16. All documents relating to the following Petitions for Variance from the Flexographic Printing Rules before the IPCB:

- a. Formel Industries, Inc., PCB 99-165
- b. Vonco Products, Inc., PCB 99-167
- c. Bema Film Systems, Inc., PCB 9-170

17. All documents relating to the Flexographic Printing Rules, including but not limited to promulgation of the Flexographic Printing Rules, variances and adjusted standards from the Flexographic Printing Rules, and enforcement of the Flexographic Printing Rules by USEPA, the State of Illinois, or any other entity with administrative or judicial enforcement authority with respect to the Flexographic Printing Rules.

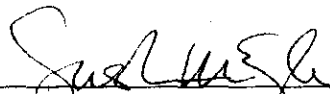
18. All documents relating to USEPA approval as SIP revisions of the adjusted standards cited in Document Request 16.

Respectfully submitted,

Dated: January 14, 2005

**PACKAGING PERSONIFIED, INC.**

By:

  
\_\_\_\_\_  
One of its attorneys

GARDNER CARTON & DOUGLAS LLP  
Roy M. Harsch  
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Telephone: (312) 569-1000  
Facsimile: (312) 569-3000

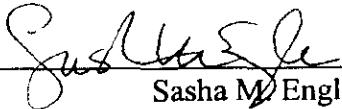
CH02/ 22359460.1

**CERTIFICATE OF SERVICE**

I, Sasha M. Engle, an attorney in the law firm of Gardner, Carton & Douglas, certify that a copy of the foregoing **RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO COMPLAINANT** was served upon:

Christopher Grant  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street  
20<sup>th</sup> Floor  
Chicago, IL 60601

by First-Class U.S. mail on this 14<sup>th</sup> day of January, 2005.

  
\_\_\_\_\_  
Sasha M. Engle

CH02/ 22359460.1

# Exhibit B

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**COMPLAINANT'S RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, responds to Respondent's First Set of Interrogatories and First Request for Production of Documents, as follows:

**DEFINITIONS AND INSTRUCTIONS**

2. **Claim of Privilege.** If any information or documents are withheld because the interrogatory is objected to on grounds of attorney-client privilege, work product or any other grounds, please specify with particularity:

- (a) The portion of the interrogatory to which the withheld information or document is responsive;
- (b) The parties participating in the production, conversation or creating the document, i.e., author, originator, addressee, recipient, and copyee;
- (c) Date of origin or preparation of the document;
- (d) The character of the information or document and its subject matter, as well as a summary of its contents;
- (e) Length in pages of any relevant document;
- (f) The file in which any relevant document was located or from which it is being withheld;
- (g) The present location of any relevant document;

- (h) Custodian of any relevant document;
- (i) The number of copies of any relevant document being withheld; and
- (j) The factual and legal basis upon which a privilege is claimed and/or any other reason for withholding the information or document.

3. **“Document”**. As used herein, the term “document” or “documents” is used in the broadest possible sense, as defined in Rule 201(b)(1) of the Illinois Supreme Court Rules, and means without limitation all written, printed, typed, photostatic, photographed, recorded, machine readable or graphic matter, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or any estimation thereof however produced or reproduced of every kind and description in your actual or constructive possession, custody, care or control. Without limiting the foregoing, the term “document” shall include the original (or copies where the original is not available) and any copy that differs from the original or other versions or drafts of the document, such as copies containing notations, insertions, corrections or any other variations. Without limiting the generality of the foregoing, “document” shall also include correspondence, letters, memoranda, accounting and financial records, financial statements, notes, diaries, summaries, statements, financial analyses, loan titles, computation sheets, budgets, expense reports, investigation reports, field notes, opinions, forecasts, audits, projections, trade letters, press releases, comparisons, telegrams, drafts, work papers, microfilm, paper and magnetic tapes, computer memory storage devices such as floppy disks or hard disks, sound and video recordings and transcripts of such recordings, charts, computer cards and printouts, computer memory and data bases, e-mail or electronic mail or messages of any kind, minutes, publications, calendars, telephone pads, bulletins, directives, pamphlets, manuals, books diaries, periodicals, photographs, memorials of telephone conversations or meetings or conferences, interoffice communications, records, reports, studies estimates, contracts, amendments, and addenda to such contracts, agreements, invoices, receipts, ledgers, books of account, analytical records, journals, logs, statistical records, costs sheets, time sheets, photographs in job or transaction files, magazines, newspapers, booklets, brochures, pamphlets, circulars, notices, drawings, diagrams, tables, instructions, notes of minutes, questionnaires, surveys, graphs, and any preliminary versions of drafts of the foregoing.

4. **“Person”**. As used herein, the term “person” or “persons” means any natural person, sole proprietorship, firm, corporation, partnership, joint venture, group, association, organization, trust, government or governmental agency, group or any other form of business activity and any other legal entity. Any reference to a “person” shall mean that “person” and all affiliates, divisions, controlled companies, subsidiaries or otherwise related entities and all to his, her or its current and former officers, directors, employees, agents, representatives, attorneys, and accountants.

5. **“Relate”**. As used herein, the term “relate” or “relating to” any given subject means in whole or part constituting, containing, defining, describing, discussing, detailing, embodying, reflecting, identifying, mentioning, stating, referring to, demonstrating, evidencing, alleging to referring, hinting at, dealing with, underlying, supporting or in any way pertaining, concerning or being relevant to that subject, and is meant to include, among other documents, all



documents consisting of, constituting, containing, referring to, discussing, describing, concerning, reflecting or being legally, logically or factually connected in any way with the matter discussed. This term includes, but is not limited to, information underlying, supporting, or necessary for the understanding of any document relating to each interrogatory or answer thereto.

6. **“Communications”**. As used herein, the term “communication” is used in the broadest possible sense and refers, without limiting the generality of this meaning, to any and all forms of transferring information, including discussion, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, discussions, contacts, proposals, memoranda, letters, telegrams, telexes, cables, telephone calls, electronic communication, or any other communication, or notes thereof, or document relating thereto, whether formal or informal.

7. **“Identify”**. As used herein, the term “identify,” when used with reference to an individual natural person, means that the answer should include the full name, address and telephone number of the person, as well as the name and address of the person’s most recent known employer. When used in reference to any other legal entity, the term “identify” means that the answer should include the most recent known name and address of that entity. When used with reference to a document, the term “identify” means that the answer should include a description of the nature and subject matter of the document, the dates of its preparation, the identify of the author and recipient, and the present location of the document. When used with reference to any other form of communication, the term “identify” means that the answer should include a description of the nature and subject matter of the communication, the date of the communication, and the identity of the persons who participated in or were present at any part of the communication. When used with reference to facts supporting the allegation, the term “identify” means that the answer should include every act, occurrence, transaction, statement, communication or conduct which you claim supports the allegation and every document which you claim supports the allegations.

8. **“Basis”**. As used herein, the term “basis” shall mean that the answer should include the specific facts and legal or business principles which support or tend to support the allegation made.

9. **“And” and “Or”**. As used herein, “and” and “or” shall be construed interchangeably so as to bring within the scope of this request any facts which might otherwise be construed as outside the scope.

10. **“You” or “your”**. As used herein, the terms “you” and “your” refers to the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, State of Illinois employees, contractors, agents, and attorneys and any other persons acting or purporting to act on behalf of the People of the State of Illinois.

11. **“Packaging Personified”**. As used herein, the term “Packaging Personified” refers to Packaging Personified, Inc. or any of its officers, directors, employees, contractors, or agents.

12. **“IEPA”**. As used herein, the term “IEPA” refers to the Illinois Environmental Protection Agency or any of its current or former employees, including but not limited to Director Renee Cipriano, Dave Kolaz, Bharat Mathur, Julie Armitage, David Bloomberg, and Kevin Mattison.

13. **“IPCB”**. As used herein, the term “IPCB” refers to the Illinois Pollution Control Board or any of its current or former employees.

14. **“USEPA”**. As used herein, the term “USEPA” refers to the United States Environmental Protection Agency or any of its current or former employees.

15. **“Act”**. As used herein, the “Act” shall refer to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*

16. **“Complaint”**. As used herein, the term “Complaint” shall mean the administrative complaint filed by the Illinois Attorney General in this matter captioned *People of the State of Illinois v. Packaging Personified, Inc.*, PCB 04-16.

17. **“VOM” or “VOC”**. As used herein, the terms “VOM” and “VOC” refer interchangeably to volatile organic material or volatile organic compounds as defined by or under the Act.

18. **“Facility”**. As used herein, the term “Facility” refers to Packaging Personified Inc.’s operations located at 246 Kehoe Boulevard, Carol Stream, DuPage County, Illinois.

19. **“Flexographic Printing Rules”**. As used herein, the term “Flexographic Printing Rules” refers to the IPCB rules at 35 IAC 218.401 *et seq.*, which regulate organic material emissions from flexographic and rotogravure printing operations in the Chicago area.

20. **“R93-9” or “Rulemaking”**. As used herein, the terms “R93-9” or “Rulemaking” refers to the rulemaking before the Illinois Pollution Control Board captioned as R93-9 that resulted in the adoption of the Flexographic Printing Rules found at 35 IAC 218.401 *et seq.*

21. **“SIP”**. As used herein, the term “SIP” refers to the USEPA-approved Illinois State Implementation Plan for regulation under the Clean Air Act in Illinois.

22. **Other terms**. As used herein, the singular shall be deemed to include the plural; the use of one gender shall include all genders, as appropriate in context; and the present tense shall include the past tense.

23. **“Time Period”**. The time period referred to in these interrogatories, unless specifically indicated to the contrary, is from January 1, 1989 to the present.

## COMPLAINANT'S GENERAL OBJECTIONS

Complainant objects to Respondent's Interrogatories and Document Request to the extent that Respondents seek information protected by attorney client, work product, or other legally recognized privilege. In addition Complainant objects to "Definitions and Instructions", paragraphs 2, 3, 6, 7, 8, to the extent that they may be construed as overbroad, overly burdensome, or that they seek the production of information neither relevant nor material to this matter.

### INTERROGATORIES

*1. Identify the person or persons providing the answers to these Interrogatories, and, for each answer, identify the information provided by each such person.*

**ANSWER:**

David Bloomberg, Unit Manager, Illinois EPA Bureau of Air, Springfield, Illinois:  
Interrogatories No. 1, 2, 4, and 14.

Maureen Wozniak, Illinois EPA Division of Legal Counsel: Interrogatories No. 1, 2, 4, 13, and 14.

Christopher Grant, Attorney for Complainant, assisted and provided the answers to Interrogatories No.'s 3, and 5 through 12.

*2. Identify each and every basis in support of your allegations in Paragraph 5 of Count I of the Complaint that the Facility has the potential or capacity to emit in excess of 25 tons of VOM per year" and that the Facility's "actual 2002 VOM emissions were at least 44 tons."*

**ANSWER:**

Complainant objects on the basis that the meaning of the phrase "...each and every basis" is ambiguous and vague. Further answering, operational information and emissions data, in part contained within annual emission reports (AERs), Seasonal Emissions Reports (SERs), permit applications, compliance commitment agreement (CCA), and communications received by the Illinois EPA from Packaging Personified, Inc., document that the Facility has the potential to emit VOM at levels in excess of the major source threshold specified by the Act and Board's regulations thereunder for the Chicago nonattainment area. In addition, Illinois EPA inspection memoranda setting forth observations by the Illinois EPA resulting from inspections of the Facility, violation notice letters (VNs), and documents generated by the Illinois EPA relative to VOM emissions by the Facility in excess of 25 tons/year in violation of the Act and Board regulations by Respondent further support violations that are the subject of the State's complaint. Documents upon which the State will rely have been provided in response to Respondent's document requests 1 through 12, and 17. Investigation into these matters continues.

3. *Identify each and every basis in support of your allegations in Paragraphs 18 and 19 of Count V.*

**ANSWER:**

Complainant objects to Interrogatory No. 3. The Interrogatory is improper in form. It is vague, overbroad, and requires Complainant to speculate as to the information sought by Respondent.

4. *Identify each and every basis in support of your allegation in Paragraph 14 that the Facility emitted more than 10 tons of VOM during the five month period from May 1 until September 30 for each year from 1997 until the filing of the Complaint.*

**ANSWER:**

Complainant objects insofar as the meaning of the phrase "...each and every basis" is ambiguous and vague. Further answering, operational information and emissions data, in part contained with AERs, SERs, permit applications, CCAs, and communications received by the Illinois EPA from Packaging Personified, Inc., document actual and/or potential VOM emissions of at least 10 tons, the threshold for a participating source under the Emissions Reduction Market System, during the period of May 1 to September 30 each year from 1999 until the present. Documents upon which the State will rely have been provided in response to Respondent's document requests 1 through 12 and 17

5. *Identify each and every basis in support of your allegations in Paragraphs 10, 11, 17, and 19 of Count VII of the Complaint.*

**ANSWER:**

Complainant objects to Interrogatory No. 5. The Interrogatory is improper in form. It is vague, overbroad, and requires Complainant to speculate as to the information sought by Respondent.

6. *Identify all entities who were listed on any IPCB notice lists and service lists for R93-9.*

**ANSWER:**

Complainant objects to Interrogatory No. 6 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The promulgation of this section of 35 Ill. Adm. Code, and R93-9 as herein defined, does not relate to any claim or defense in the instant case.

7. *Identify all entities who, prior to or during the pendency of R93-9 or after adoption of the Flexographic Printing Rules, received correspondence from or engaged in communications with IEPA related to R93-9 or the Flexographic Printing Rules.*

**ANSWER:**

Complainant objects to Interrogatory No. 7 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Neither the promulgation of the Flexographic Printing Rules nor the identity of correspondents, other than the Respondent, relates to any claim or defense in the instant case.

8. *For each entity identified in response to either Interrogatory 6 or 7, provide the following information:*

- a. *Identify any communications between the entity and IEPA relating to R93-9 or the Flexographic Printing Rules.*
- b. *Describe the type of business, including the types of product printed, the inks used, whether the inks used are water-based or solvent-based, and the processes used by the entity.*
- b. *Identify the control equipment used by the entity to comply with the Flexographic Printing Rules, the cost associated with the control equipment, and the date the control equipment was employed.*

**ANSWER:**

Plaintiff objects to Interrogatory No.8 as immaterial and irrelevant. See: Answers to Interrogatories 6 and 7. Nothing in the information sought in Interrogatory No. 8 relates to any claim or defense in the instant case. Moreover, Interrogatory No. 8 is overly burdensome. Obtaining the requested information would require Complainant to search thousands of records, and assemble information not regularly kept in the course of its operations.

9. *Identify each and every communication, related to clean air regulation with respect to permitting, Flexographic Printing Rules, or emissions reduction systems, between IEPA and the following companies:*

- a. *Formel Industries, Inc.*
- b. *Vonco Products, Inc.*
- c. *Bema Film Systems, Inc.*

**ANSWER:**

Complainant objects to Interrogatory No. 9 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Correspondence between Complainant and the above-listed entities does not relate to any claim or defense in this matter.

10. *Identify each and every flexographic or rotogravure printer business in the Chicago area, as that area is described at 35 IAC 218.100(a).*

**ANSWER:**

Complainant objects to Interrogatory No. 10 as it seeks information that is immaterial, irrelevant, not reasonably calculated to lead to relevant information, and is overly burdensome.

11. *Identify each and every communication between USEPA and the State of Illinois or any Illinois state agency relating to the Flexographic Printing Rules, including but not limited to promulgation, SIP approval, and enforcement of the Flexographic Printing Rules and variances and adjusted standards from the Flexographic Printing Rules.*

**ANSWER:**

Complainant objects to Interrogatory No. 11 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The information sought does not relate in any way to the claims or defenses in the instant matter.

12. *Identify each and every communication between and among IEPA, USEPA, and the companies listed in Interrogatory 9 relating to USEPA approval as SIP revisions of the*

*adjusted standards from the Flexographic Printing Rules granted to those companies, captioned before the IPCB as AS 00-11, AS 00-12, and AS 00-13.*

**ANSWER:**

Complainant objects to Interrogatory No. 12 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The information sought does not relate in any way to any claim or defense in the instant matter.

*13. Identify each and every basis in support of the amount of penalty you are seeking, including but not limited to:*

- a. The determination of the amount of economic benefit that you assert Packaging Personified received as a result of the non-compliance alleged in the Complaint.*
- b. The basis for the economic benefit determination, including all informational inputs, all formulas used, any software used to calculate the economic benefit, and all assumptions of the economic benefit model used.*
- c. Identify the individuals involved in determining the penalty amount and economic benefit amount.*

**ANSWER:**

Complainant objects insofar as the meaning of the phrase "...each and every basis" is ambiguous, vague and not defined. Further answering, Complainant has not yet determined the penalty it will ask the Board to assess in this matter. Complainant notes that penalties sought are found in the prayer for relief in each count of the Complaint, and that Statutory penalties are contained in 415 ILCS 5/42 (2002). Additional counts may be added by amendment, which will increase the amount of penalties sought by Complainant. Complainant may also seek avoided/past due costs and fees, expert witness cost and attorney fees. The amount of these costs and fees is not yet determined.

- a. Complainant will seek from Packaging Personified, Inc. a civil penalty, in part, representative of the economic benefit of noncompliance (BEN) derived by Respondent from



violations of New Source Review (NSR) and State permitting requirements, the Illinois Environmental Protection Act, and Pollution Control Board regulations thereunder alleged in the State's Complaint. Using USEPA's BEN Windows Computer Model, Illinois EPA originally estimated Respondent's BEN at approximately \$585,000.00. However, Illinois EPA will not rely upon the BEN computer model in preparation for and at hearing in this matter.

Accordingly, the civil penalty the State will seek is subject to revision dependant upon the economic benefit analysis and specific methodology Complainant will utilize at hearing, additional information received by Complainant relative to compliance costs, and the gravity of violations that are the subject of the State's Complaint. The Illinois EPA will determine the economic benefit of noncompliance based upon an economic benefit analysis performed by Illinois Office of Internal Audit, Audit Manager, Gary Styzens.

b. The Illinois EPA used the USEPA's BEN Model as the basis for its initial penalty calculation. Inputs and assumptions used in the model were based upon information provided by the Facility, and are set forth within the BEN calculation sheet provided in response to Respondent's document requests. However, the Illinois EPA does not intend to rely on the BEN Model as support for its penalty calculation; rather, Mr. Gary Styzens will perform an independent economic benefit analysis.

c. Complainant objects on the basis that the Board, not Complainant, assesses appropriate penalties, using pertinent provisions within the Act. Further answering, the

Following persons were involved in determining Economic Benefit:

Maureen Wozniak  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

Julie Armitage  
Managing Attorney  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

Christopher Grant  
Assistant Attorney General

The economic benefit derived by Respondent resulting from noncompliance with the Act and Board regulations thereunder was calculated by Illinois EPA Assistant Counsel Maureen Wozniak utilizing the USEPA BEN Windows computer model and compliance cost data received by Illinois EPA from Respondent to facilitate settlement discussions.

This interrogatory will be supplemented as appropriate.

14. *Identity all witnesses whom you intend to have testify at the hearing, including the following information:*

- a. *For each lay witness, identify the subjects on which the witness will testify.*
- b. *For each independent expert witness, identify the subjects on which the witness will testify and opinions you expect to elicit.*
- c. *For each controlled expert witness, identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.*

**ANSWER:**

a. David Bloomberg, Compliance Unit Manager/Bureau of Air; Illinois EPA Springfield, Illinois. Mr. Bloomberg will offer testimony on the Emissions Reduction Market System (ERMS) and NSR requirements; flexographic printing, in general; applicable regulatory provisions; the Facility's compliance with the applicable regulatory provisions; and other specific information regarding the Facility.

b. As of the date of Answering these Interrogatories, Complainant has not identified expert witnesses that will be called to testify, and opinions have not been obtained.

c. At the present, the State has not identified a controlled expert witness that will be called to testify at hearing, with the exception of Mr. Gary Styzens. Mr. Styzens will offer testimony that provides an analysis of the time value of money specifically pertaining to economic benefits derived by Packaging Personified, Inc. resulting from costs avoided and/or delayed resulting from its failure to operate in compliance with the Act and Board regulations thereunder. Gary Styzens has not, to date, finalized an economic benefit analysis or generated reports setting forth opinions and conclusions based upon his review of all pertinent information relative to Packaging Personified.

The State will seasonably supplement this Answer consistent with Supreme Court Rule 213 and 35 Ill. Adm. Code 101.616.

#### **DOCUMENT REQUESTS**

1. *All documents relating to the allegations in the Complaint.*

#### **RESPONSE:**

Complainant objects the Document Request No. 1 as being overly vague.

2. *All documents identified in your responses to Interrogatories 1-14 or reviewed in the course of responding to Interrogatories 1-14.*

#### **RESPONSE:**

See: Answers to Interrogatories No. 1 through 14, and objections thereto, which are incorporated by reference into this Response. Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188

W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois.

Complainant will consult with Respondent regarding the location of production.

3. *All documents you intend to use at any depositions in this case.*

**RESPONSE:**

Complainant does not currently have depositions scheduled, and does not have documents selected for deposition. This Response will be supplemented as required.

4. *All documents you intend to offer as evidence at the hearing in this case.*

**RESPONSE:**

Complainant does not yet have documents selected for use at hearing, and will supplement this Response as required.

5. *All documents you intend to use in any manner or for any purpose at the hearing in this case.*

**RESPONSE:**

Complainant objects to Document Request No. 5 as overly vague. See: Response to Document Request No. 4.

6. *All photographs, models, slides, films, videotape, drawings or other depictions of the Facility.*

**RESPONSE:**

Complainant will produce responsive photographs, etc., at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

7. *All documents referring or relating to any communications between IEPA and Packaging Personified.*

**RESPONSE:**

Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

8. *All documents relating to submittals to IEPA from Packaging Personified, including but not limited to permit applications, reports, and other information.*

**RESPONSE:**

Complainant objects on the basis that the requested documents are already in the possession of Respondent. Further Answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

9. *All documents relating to any inspection or site visit performed at the Facility by IEPA or any other State of Illinois employee or agency.*

**RESPONSE:**

Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

10. *All documents referring or relating to communications of any kind within IEPA concerning the Facility or the allegations of the Complaint.*

**RESPONSE:**

Complainant objects to Document Request No. 10 as overly vague. Further answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

11. *All documents referring or relating to communications of any kind between IEPA and any third party concerning the Facility or the allegations of the Complaint.*

**RESPONSE:**

Complainant objects to Document Request no. 11 as overly vague. Further answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

12. *All documents relating to your computation, calculation or estimation of a penalty for the violations alleged in the Complaint.*

**RESPONSE:**

Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

13. *All documents relating to R93-9, including but not limited to comments received during the notice-and-comment period.*

**RESPONSE:**

Complainant objects to Document Request No. 13 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The proceedings of R93-9, and promulgation of the Flexographic Printing Rules do not relate to any claim or defense in this matter. Moreover, Respondent's request is overly burdensome.

14. *All documents relating to R93-9 provided by IEPA to Packaging Personified either before the Rulemaking, during the pendency of R93-9, or after adoption of the Flexographic Printing Rules.*

**RESPONSE:**

Complainant objects to Document Request No. 14 to the extent that it seeks information that is immaterial and irrelevant to the instant case. Complainant also objects on the basis that any responsive documents are already in the possession of Respondent. Further answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

15. *All documents relating to any notice provided by the IPCB to Packaging Personified related to R93-9.*

**RESPONSE:**

Complainant objects to Document Request No.15 as vague, and that it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. See: Response to Document Request No. 14.

16. *All documents relating to the following Adjusted Standard Petitions before the IPCB:*

- a. *In the Matter of Petition of Formel Industries, Inc. for an Adjusted Standard, AS 00-13*
- b. *In the Matter of Petition of Vonco Products, Inc. for an Adjusted Standard, AS 00-12*
- c. *In the Matter of Petition of Bema Film Systems, Inc. for an Adjusted Standard, AS 00-11*

**RESPONSE:**

Complainant objects to Document Request No. 16 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Adjusted Standard petitions filed by third parties in an unrelated Board matter have no relation to the instant case.

16. [Sic] *All documents relating to the following Petitions for Variance from the Flexographic Printing Rules before the IPCB:*

- a. *Formel Industries, Inc., PCB 99-165*
- b. *Vonco Products, Inc., PCB 99-167*
- c. *Bema Film Systems, Inc., PCB 9-170*

**RESPONSE:**

Complainant objects to this document request as it seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to relevant information. See: Response to Document Request No. 16 [above].

17. *All documents relating to the Flexographic Printing Rules, including but not limited to promulgation of the Flexographic Printing Rules, variances and adjusted standards*



*from the Flexographic Printing Rules, and enforcement of the Flexographic Printing Rules by USEPA, the State of Illinois, or any other entity with administrative or judicial enforcement authority with respect to the Flexographic Printing Rules.*

**RESPONSE:**

Complainant objects to Document Request No. 17 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Further objecting, Respondent's request is highly oppressive and overly burdensome.

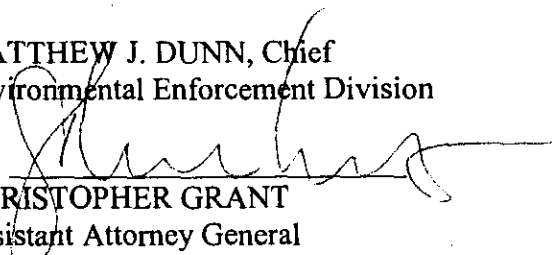
18. *All documents relating to USEPA approval as SIP revisions of the adjusted standards cited in Document Request 16.*

**RESPONSE:**

Complainant objects to Document Request No. 18 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information in the instant case.


PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney General of the State  
of Illinois,

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

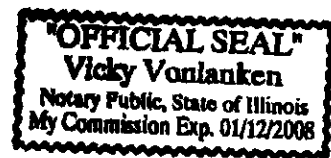
By:   
CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, 20<sup>th</sup> Fl.  
Chicago, Illinois 60601  
(312) 814-5388

**VERIFICATION**

I, David Bloomberg, Bureau of Air Compliance Unit Manager for the Illinois Environmental Protection Agency, depose and state, that I have read the attached Responses to Respondent's First Set of Interrogatories and Request for the Production of Documents, and that the answers to Interrogatories 1, 2, 4, and 14 are true and correct, to the best of my knowledge and belief.

  
\_\_\_\_\_  
David Bloomberg

SUBSCRIBED AND SWORN TO BEFORE  
me this 17<sup>th</sup> DAY OF March, 2005



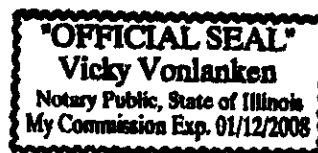
  
\_\_\_\_\_  
NOTARY PUBLIC

VERIFICATION

I, Maureen Wozniak, Assistant Counsel for the Illinois Environmental Protection Agency, depose and state, that I have read the attached Responses to Respondent's First Set of Interrogatories and Request for the Production of Documents, and that the answers to Interrogatories 1, 2, 4, 13, and 14 are true and correct, and that the production of documents is complete, to the best of my knowledge and belief.

Maureen Wozniak  
Maureen Wozniak

SUBSCRIBED AND SWORN TO BEFORE  
me this 17th DAY OF March, 2005



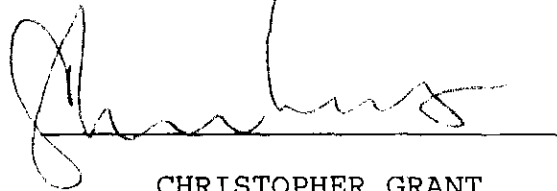
Vicky Vonlancken  
NOTARY PUBLIC

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,     )  
  )  
    Complainant,                                 )  
  )  
            vs.                                     )     PCB 04-16  
  )  
PACKAGING PERSONIFIED, INC.,             )     (Enforcement)  
an Illinois corporation,                     )  
  )  
    Respondent.                                 )

**CERTIFICATE OF SERVICE**

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18<sup>th</sup> day of March, 2005, Complainant's Responses to Respondent's First Set of Interrogatories and Requests for the Production of Documents, upon the person listed below, by hand delivery.



CHRISTOPHER GRANT

Service List:

Mr. Roy Harsch  
Gardner Carton Douglas LLP  
191 N. Wacker Drive, Suite 3700  
Chicago Illinois 60602

# Exhibit C

ILLINOIS POLLUTION CONTROL BOARD  
June 28, 2006

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

**HEARING OFFICER ORDER**

On January 31, 2006, the respondent filed a motion to compel responses to written discovery. On February 16, 2006, complainant filed its response. On April 12, 2006, the respondent filed a motion for leave to file *instanter* and reply in support of respondent’s motion to compel. Complainant has not filed a response to respondent’s motion for leave to file or to the reply itself. Respondent’s motion is granted. The parties represented at various telephonic status conferences with the hearing officer that they have been attempting to resolve the discovery issue but they are at an impasse.

**Motion To Compel**

In respondent’s motion to compel, respondent alleges that the complainant refused to provide the discovery requested in Interrogatories 6 through 12 and Document Requests 13 through 18. Respondent’s motion to compel was not accompanied by a copy of the interrogatories as required by Section 101.622 of the Board’s procedural rules. Respondent instead provides a summary of the requested information, which is insufficient. Complainant, however, attached a copy of the interrogatories in question to its response.

Interrogatory 6. Identify all entities who were listed on any IPCB notice lists and service lists for R93-9.

Interrogatory 7. Identify all entities who, prior to or during the pendency of R93-9 or after adoption of the Flexographic Printing Rules, received correspondence from or engaged in communications with the IEPA related to R93-9 or the Flexographic Printing Rules.

Interrogatory 8. For each entity identified in response to either Interrogatory 6 or 7, provide the following information:

- a. Identify any communication between the entity and IEPA relating to R93-9 or the Flexographic Printing Rules.

- b. Describe the type of business, including the types of product printed, the inks used, whether the inks used are water-based or solvent-based, and the processes used by the entity.
- c. Identify the control equipment used by the entity to comply with the Flexographic Printing Rules, the cost associated with the control equipment, and the date the control equipment was employed.

Interrogatory 9. Identify each and every communication related to clean air regulation with respect to permitting, Flexographic Printing Rules, or emissions reduction systems, between IEPA and the following companies:

- a. Formel Industries, Inc.
- b. Vonco Products, Inc.
- c. Bema Film Systems, Inc.

Interrogatory 10. Identify each and every flexographic or rotogravure printer business in the Chicago area, as that is described at 35 IAC 218.100(a).

Interrogatory 11. Identify each and every communication between USEPA and the State of Illinois or any Illinois state agency relating to the Flexographic Printing Rules, including but not limited to promulgation, SIP approval, and enforcement of the Flexographic Printing Rules and variances and adjusted standards from the Flexographic Printing Rules.

Interrogatory 12. Identify each and every communication between and among IEPA, USEPA, and the companies listed in Interrogatory 9 relating to USEPA approval as SIP revisions of the adjusted standards from the Flexographic Printing Rules granted to those companies, captioned before the IPCB as AS 00-11, AS 00-12, and AS 00-13.

Document Request 13. All documents relating to R93-9, including but not limited to comments received during the notice-and-comment period.

Document Request 14. All documents relating to R93-9 provided by IEPA to Packaging Personified either before the Rulemaking, during the pendency of R93-9, or after adoption of Flexographic Printing Rules.

Document Request 15. All documents relating to any notice provided by the IPCB to Packaging Personified related to R93-9.

Document Request 16. All documents relating to the following Adjusted Standard Petitions before the IPCB:

- a. In the Matter of Petition of Formel Industries, Inc. for an Adjusted Standard, AS 00-13
- b. In the Matter of Petition of Vonco Products, Inc. for an Adjusted Standard, AS 00-12
- c. In the Matter of Petition of Bema Film Systems, Inc. for an Adjusted Standard, AS 00-11

Document Request 16 [sic]. All documents relating to the following Petitions for Variance from the Flexographic Printing Rules before the IPCB:

- a. Formel Industries, Inc., PCB 99-165
- b. Vonco Products, Inc., PCB 99-167
- c. Bema Film Systems, Inc., PCB 99-170

Document Request 17. All documents relating to the Flexographic Printing Rules, including but not limited to promulgation of the Flexographic Printing Rules, variances and adjusted standards from the Flexographic Printing Rules, and enforcement of the Flexographic

Printing Rules by the USEPA, the State of Illinois, or any other entity with administrative or judicial enforcement authority with respect to the Flexographic Printing rules.

Document Request 18. All documents relating to USEPA approval as SIP revisions of the adjusted standards cited in Document Request 16.

**Complainant's Response**

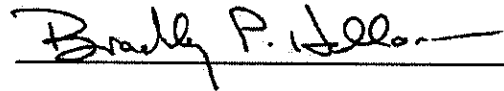
In summary, the complainant objects to each of these interrogatories and document requests as irrelevant, immaterial and/or overly burdensome.

**Discussion**

Section 101.616 of the Board's procedural rules state that all relevant information and information calculated to lead to relevant information is discoverable.

The rulemaking process itself is immaterial and irrelevant to the violations alleged in the complaint at bar. Moreover, the requested information would be overly burdensome to the complainant, much of which is in the Board's public file. Respondent's motion to compel is denied.

IT IS SO ORDERED.



Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917

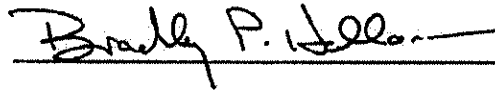


CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on June 29, 2006, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on June 29, 2006:

Dorothy M. Gunn  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
312.814.8917

PCB 2004-016  
Christopher J. Grant  
Office of the Attorney General  
188 West Randolph, 20th Floor  
Chicago, IL 60601

PCB 2004-016  
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PCB 2004-016  
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PCB 2004-016  
Sasha M. Engle  
Gardner Carton & Douglas  
191 N. Wacker Drive  
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Chicago, IL 60606-1698

PCB 2004-016  
Phyllis Muccianti  
Packaging Personified, Inc.  
246 Kehoe Boulevard  
Carol Stream, IL 60188-1816