ILLINOIS POLLUTION CONTROL BOARD
September 8, 2011

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

PAULA BECKER WHEELER, CHRISTOPHER GRANT, L. NICHOLE CUNNINGHAM, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

ROY M. HARSCH, LAWRENCE W. FALBE, YESENIA VILLASENOR-RODRIGUEZ, DRINKER BIDDLE & REATH LLP, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

Today the Board decides a State enforcement action brought against a DuPage County facility that extrudes and prints plastic bags. The Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a multi-count complaint alleging that Packaging Personified, Inc. (Packaging) violated statutory, regulatory, and permit requirements for air pollution control. The allegations concern Packaging's polyethylene and polypropylene film processing and printing facility, which is located at 246 Kehoe Boulevard in Carol Stream, DuPage County. For the reasons below, the Board finds that Packaging violated nearly all of the requirements at issue. The Board imposes a civil penalty on Packaging of $456,313.57.

In this opinion, the Board first gives an overview of its decision. Second, the Board describes the alleged violations and requested relief. Third, the Board sets forth the procedural history of this case. Fourth, the Board makes its findings of fact. Finally, the Board discusses the issues and renders its legal conclusions regarding the violations alleged and the remedies requested. The Board's order follows the opinion.

OVERVIEW OF THE BOARD'S DECISION

The Board finds that Packaging violated the Board's "flexographic printing rule" (35 Ill. Adm. Code 218.401) by failing to control volatile organic material (VOM) emissions from Packaging's flexographic printing presses. The Board also finds that Packaging failed to comply with permitting, reporting, recordkeeping, and compliance demonstration requirements of the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and regulations adopted under the Act, including requirements of the Clean Air Act Permit Program (CAAPP) for major sources in a

"severe" ozone nonattainment area. Additionally, Packaging violated conditions of a construction permit issued by the Illinois Environmental Protection Agency (IEPA).

Based on the factors of Section 33(c) of the Act (415 ILCS 5/33(c) (2010)), the Board finds that a civil penalty is warranted. After considering the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), the Board imposes on Packaging a $456,313.57 civil penalty which, among other things, serves to recoup the economic benefit accrued by the company from its noncompliance.

ALLEGED VIOLATIONS AND REQUESTED RELIEF

Under the Act, the Attorney General may bring an action before the Board against anyone allegedly violating the Act, any rule adopted under the Act, any permit or term or condition of a permit, or any Board order. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. On August 5, 2003, the People filed a seven-count complaint against Packaging. On July 11, 2005, the People filed an amended twelve-count complaint (Am. Comp.), which is summarized below.

Alleged Violations

Count I: Constructing Emission Sources Without a Permit

In count I of the amended complaint, the People allege that Packaging violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010))[1] and Section 201.142 of the regulations (35 Ill. Adm. Code 201.142) by failing to obtain construction permits from IEPA before constructing various emission sources from 1989 to 1995. Am. Comp. at 5.

Count II: Operating Emission Sources Without a Permit

In count II, the People allege that Packaging violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) and Section 201.143 of the regulations (35 Ill. Adm. Code 201.143) by operating emission sources from 1989 to 2002 without obtaining operating permits from IEPA. Am. Comp. at 6.

Count III: Failing to Timely Submit Annual Emissions Reports

In count III, the People allege that Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 201.302(a) and 254.137 of the regulations (35 Ill. Adm. Code 201.302(a), 254.137) by failing to timely submit Annual Emissions Reports (AERs) for the years 1992 through 2001. Am. Comp. at 9.

[1] Because the relevant provisions of the Act are not materially different from those that were in effect when the amended complaint was filed, the Board cites the current 2010 Illinois Compiled Statutes (ILCS).

Count IV: Operating a Major Stationary Source Without a CAAPP Permit

In count IV of the amended complaint, the People allege that Packaging violated Sections 9(a), 39.5(5), and 39.5(6)(b) of the Act (415 ILCS 5/9(a), 39.5(5), 39.5(6)(b) (2010)) and Section 270.201(b) of the regulations (35 Ill. Adm. Code 270.201(b)) by failing to timely submit an application for a CAAPP permit and nevertheless operating a major stationary source. Am. Comp. at 13-14.

Count V: Constructing and Operating a Major Modification Without LAER

In count V, the People allege that between 1992 and 1998, Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 203.201, 203.203, 203.301, and 203.601 of the regulations (35 Ill. Adm. Code 203.201, 203.203, 203.301, 203.601) by installing and operating a "major modification" without demonstrating or obtaining a permit setting forth the Lowest Achievable Emission Rate (LAER). Am. Comp. at 19-20.

Count VI: Failing to Timely Submit ERMS Application and Seasonal Emissions Reports

In count VI, the People allege that Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 205.300, 205.310, and 254.501 of the regulations (35 Ill. Adm. Code 205.300, 205.310, 254.501) by failing to timely submit to IEPA an Emissions Reduction Market System (ERMS) baseline application in 1998 and seasonal emission information for the years 2000 through 2002. Am. Comp. at 24.

Count VII: Failing to Demonstrate Compliance with Flexographic Printing Rule

In count VII, the People allege that from 1993 into 2005, Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Section 218.401 of the regulations (35 Ill. Adm. Code 218.401) by applying inks with a VOM content in excess of 40% without analyzing ink usage or otherwise demonstrating compliance with the flexographic printing rule. Am. Comp. at 28-29.[2]

Count VIII: Failing to Maintain Records under Flexographic Printing Rule

In count VIII of the amended complaint, the People allege that from 1993 into 2005, Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 218.404(c) and (d) of the regulations (35 Ill. Adm. Code 218.404(c), (d)) by failing to keep and maintain various records concerning inks used at Packaging's facility. Am. Comp at 31.

[2] With exceptions not relevant here, "VOM" (volatile organic material) or "VOC" (volatile organic compound) means "any compound of carbon . . . that participates in atmospheric photochemical reactions." 35 Ill. Adm. Code 211.7150. "Flexographic printing" means "a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials." 35 Ill. Adm. Code 211.2370.

Count IX: Exceeding Permitted VOM Usage Limits

In count IX, the People allege that Packaging violated Condition 5 of the company's construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by exceeding VOM usage limits in 2003 and 2004. Am. Comp. at 34.

Count X: Failing to Demonstrate Compliance with Permit Condition 4(c)

In count X, the People allege that Packaging violated Condition 4(c) of the company's construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by using noncompliant inks and failing to demonstrate through recordkeeping or other means that Packaging did not use inks with more than 40% VOM on presses 1 and 2. Am. Comp. at 35.

Count XI: Failing to Test VOM Content as Required by Permit Condition 4(d)

In count XI, the People allege that in 2004, Packaging violated Condition 4(d) of the company's construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by failing to test for the VOM content of inks applied at the facility. Am. Comp. at 37.

Count XII: Failing to Maintain Records Required by Permit Conditions 15 and 16

In count XII of the amended complaint, the People allege that in 2003 and 2004, Packaging violated Conditions 15 and 16 of the company's construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by failing to keep daily records of names and VOM content of inks used, maintain daily maintenance records of its emission capture system, and keep monthly records of inks used, VOM and hazardous air pollutant (HAP) content, and VOM and HAP emissions. Am. Comp. at 39.

Requested Relief

The People ask the Board to impose a civil penalty of $861,274 on Packaging and issue an order requiring Packaging to cease and desist from future violations of the Act and Board regulations. Br. at 2.

PROCEDURAL HISTORY

On August 5, 2003, the People filed a seven-count complaint against Packaging. Packaging filed an answer to the complaint on January 16, 2004. On July 11, 2005, the People filed a motion for leave to file an amended complaint, attaching the amended twelve-count complaint (Am. Comp.). In an order of August 18, 2005, the hearing officer granted the motion for leave. Packaging filed an answer to the amended complaint on October 31, 2005 (Ans.).

Hearing was held on June 29, 2009 (Tr.1) and June 30, 2009 (Tr.2) in Elmhurst, Will County, before Board Hearing Officer Bradley P. Halloran. Seven witnesses testified. The following witnesses testified on behalf of the People: Mr. David Bloomberg, Compliance Unit Manager with IEPA's Bureau of Air, Division of Air Pollution Control; and Mr. Gary Styzens,

Economic Benefit Analyst and Manager with IEPA. Mr. Richard Trzupek of the environmental consulting firm of Mostardi Platt Environmental also testified for the People, but as an adverse witness. The following witnesses testified on behalf of Packaging: Mr. Trzupek; Mr. Dominic Imburgia, founder and president of Packaging; Mr. Joseph Imburgia, General Manager of Packaging; Mr. Timothy Piper, Quality Compliance Manager with Packaging; and Mr. Christopher McClure, Director and Economic Benefit Analyst with Navigant Consulting. Hearing Officer Halloran found all of the witnesses to be credible. Tr.2 at 163.

The People offered 14 exhibits at hearing, all of which were admitted into the record (Comp. Exh.). Packaging offered 51 exhibits at hearing, all of which were admitted (Resp. Exh.). The parties also presented a stipulation correcting typographical errors regarding requests for admission, which was accepted as a hearing officer exhibit (HO Exh.).

On September 25, 2009, the People filed a post-hearing brief (Br.). In the brief, the People state that "[c]complainant voluntarily dismisses Count XI of the People's Amended Complaint." Br. at 15. The Board construes this statement as a motion for the voluntary dismissal of count XI, and grants the motion. On November 6, 2009, Packaging filed a response brief (Resp. Br.). On December 3, 2009, the People filed a reply brief (Reply Br.).

FACTS

Company and Facility Background

Packaging is an Illinois corporation that owns and operates a polyethylene and polypropylene film processing and printing facility located at 246 Kehoe Boulevard in Carol Stream, DuPage County. Ans. at 2. Packaging was started by Mr. Dominic Imburgia and his current partner approximately 34 years ago (as of the June 2009 hearing) and has always been located in Carol Stream. Tr.1 at 182, 183, 186. Mr. Dominic Imburgia, who has always been president and majority stockholder of Packaging, has two sons who work for the company: Joseph, former Plant Manager (including in 1997) and current General Manager, "runs [the] plant operations"; and Dan "is in sales" and administration. Tr.1 at 183, 189, 191-92, 195, 224.

Packaging extrudes and prints plastic bags. Ans. at 2; Tr.1 at 42. The company manufactures film packaging used in a variety of industries, including consumer products, food, and medical. Resp. Exh. 55 at 1. Polyethylene film is produced with "extruders" at the facility using polyethylene pellets. Resp. Exh. 9; Resp. Exh. 55 at 1; Comp. Exh. 13 at 3; Comp. Exh. 9 at 1.4. Polypropylene film is shipped to the facility from an outside vendor. Resp. Exh. 9. Packaging's flexographic printing presses print images and text on some of the film. *Id*. Most of the film is then converted to plastic bags for bulk shipment to Packaging's customers. Resp. Exh. 9; Resp. Exh. 55 at 1.

Packaging employed 100 persons at the Carol Stream facility as of the time of the June 2009 hearing. Tr.1 at 188. As of July 2002, the facility had approximately 130 employees. Comp. Exh. 9 at 1.1-1. In addition to the Carol Stream facility, Packaging in November 2002 acquired a second facility, which is located in Sparta, Michigan. Tr.1 at 188, 220; Comp. Exh. 5

at 14-15; HO Exh. 1 at 1. Packaging competes nationally and has roughly 200 customers. Tr.1 at 187-88.

Sources of Emissions

Packaging's Carol Stream facility has never contained more than 10 sources of emissions. Ans. at 31. Packaging's extrusion and printing operations emit VOM. Ans. at 2-3, 18; Comp. Exh. 13; Tr.1 at 42-43. Packaging installed two plastic bag extruders and began operating them in 1989. Comp. Exh. 5 at 3; Ans. at 9. Packaging installed and began operating an additional extruder in 1992 and another extruder in 1995. Ans. at 3, 7, 9, 18; Comp. Exh. 5 at 3-4. Packaging installed and began operating flexographic printing presses as follows: press 1 in 1992; press 4 in February 1992; presses 2 and 5 in 1995; press 6 in late 2003 or early 2004. Ans. at 3, 7, 18; Comp. Exh. 5 at 4-6, 14; Resp. Exh. 55 at 3; Resp. Exh. 56 at 3.1-1. Packaging ceased operating press 4 at the Carol Stream facility in December 2002. Resp. Exh. 4; Tr.1 at 29, 220; Tr.2 at 91. Packaging moved press 4 to the Sparta, Michigan facility in December 2004. Comp. Exh. 5 at 14-15.

Packaging used low-VOM water-based inks on presses 1 and 2. Tr.1 at 193-94, 196; Tr.2 at 11-12, 87; Ans. at 36; Resp. Exh. 55 at 2. These presses, which operated in conjunction with an extruder, process "low-slip or no-slip film," allowing for the use of water-based inks. Resp. Exh. 55 at 5; Tr.1 at 193-94, 196. On presses 4 and 5, Packaging used solvent-based inks with a VOM content in excess of 40% by volume of the ink. Ans. at 36; Comp. Exh 5 at 12-13; Tr.1 at 193-94; Tr.2 at 13. Presses 4 and 5 processed "high-slip film," which necessitates solvent-based inks as "water-based inks do not adhere to high-slip film." Resp. Exh. 55 at 6-7; Tr.1 at 194. A large percentage of Packaging's customers require high-slip film. Resp. Exh. 55 at 6-7. The vast majority of inks used by Packaging were solvent-based inks. Tr.2 at 14-15.

VOM is released from the solvent-based inks used on the presses. Resp. Exh. 55 at 3. Press 4 was never connected to any emission control device. Tr.2 at 13; Comp. Exh. 5 at 14; Tr.1 at 194. To accelerate the ink-drying process, press 5 came with a "tunnel dryer" or recirculating drying oven (Tr.1 at 25, 194-95, 220-21), which generated heat by burning VOM emissions, reducing natural gas usage (Tr.1 at 25-26, 198, 221; Tr.2 at 15-16; Resp. Exh. 55 at 3).

"Informal" Emissions Testing

On December 12, 2001, Packaging's environmental consultant, Mr. Trzupek, then of Huff & Huff, Inc., performed an "informal emissions test" on the press 5 tunnel dryer to assess its VOM capture and destruction efficiency. Comp. Exh. 5 at 15; Comp. Exh. 8 at 1; Resp. Exh. 21; Tr.1 at 30-31, 93-94; Tr.2 at 16-17, 112. Press 5 has ink-drying units associated with its printing stations, along with a tunnel dryer after the last printing station. Comp. Exh. 8 at 1. Fumes captured at the drying units are vented to the tunnel dryer, which has an "internal, recirculating thermal oxidizer to destroy VOM emissions." *Id.* Mr. Trzupek measured for VOM emissions at the inlet to and exhaust from the tunnel dryer to assess its VOM destruction efficiency, while monitoring press 5's VOM usage rate for solvents and inks. Testing was conducted for approximately 30 minutes at each of the two locations, during which time press 5

"operated without interruption or change in production rate." *Id*. at 1-2; Tr.2 at 17-18. Based on his testing, Mr. Trzupek concluded that the "capture efficiency of the control system on Press #5 is 82.6%, and the destruction efficiency is 93.6%, thus providing an overall control of 77.3%." Comp. Exh. 8 at 2; Tr.2 at 18

IEPA did not receive notice of Mr. Trzupeck's informal emissions testing of the press 5 tunnel dryer or the test protocols prior to the testing. Tr.1 at 45-46; Tr.2 at 82. Mr. Trzupek's report of the testing was provided to IEPA on March 31, 2003. Comp. Exh. 8 at 1. Mr. Trzupek's test did not include three one-hour test runs. Tr.2 at 80-82; Comp. Exh. 5 at 15; Comp. Exh. 8 at 1; Tr.1 at 31, 45-46. As part of this test, Mr. Trzupek did not directly measure press 5's VOM capture efficiency, which he described as "a time consuming and expensive process." Resp. Exh. 55 at 3; Tr.2 at 81. At the time of the informal testing, Mr. Trzupek explained to Packaging that a "formal compliance test" on the press 5 tunnel dryer would still be necessary if the tunnel dryer was ultimately chosen as Packaging's emission control device. Tr.1 at 26; Tr.2 at 40; *see also* Tr. 1 at 28-31 and Tr.2 at 18-19, 39-40, 77-78.

Permitting

Packaging did not obtain construction permits or operating permits from IEPA for the four extruders or presses 1, 2, 4, and 5. Ans. at 3-4, 9; Comp. Exh. 5 at 3-8. On July 2, 2002, Packaging submitted a CAAPP permit application to IEPA. Comp. Exh. 9; Resp. Exh. 56; Tr.1 at 57-58; Tr.2 at 10. The CAAPP permit application was the first operating permit application submitted by Packaging to IEPA. Comp. Exh. 5 at 6-7; Tr. 1 at 21. IEPA issued a CAAPP completeness determination dated July 3, 2002. Resp. Exh. 14; Tr.2 at 10-11.

On March 4, 2003, Packaging applied with IEPA for a construction permit. Resp. Exh. 17; Comp. Exh. 12; Tr.2 at 36. IEPA denied the construction permit application on June 2, 2003. Resp. Exh. 20; Tr.2 at 37. IEPA issued construction permit 03030016 to Packaging on August 13, 2003. Comp. Exh. 3; Resp. Exh. 26; Comp. Exh. 5 at 17; Tr.2 at 37. The permit was issued for the construction of press 6 (Comexi press) and the RTO "controlling one new press (Comexi press [press 6]) and one existing press (press #5)." Comp. Exh. 3 at 1; Tr.1 at 72, 224-25.[3] Conditions 4 and 5 of the construction permit read as follows:

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[3] Generally, "RTOs use a high-density media such as a ceramic-packed bed still hot from a previous cycle to preheat an incoming VOC-laden waste gas stream. The pre-heated, partially oxidized gases then enter a combustion chamber where they are heated by auxiliary fuel (natural gas) combustion to a final oxidation temperature typically between . . . 1400 to 1500(F) and maintained at this temperature to achieve maximum VOC destruction . . . . The purified, hot gases exit this chamber and are directed to one or more different ceramic-packed beds cooled by an earlier cycle. Heat from the purified gases is absorbed by these beds before the gases are exhausted to the atmosphere. The reheated packed bed then begins a new cycle by heating a new incoming waste gas stream." USEPA, *Air Pollution Control Technology Fact Sheet*, EPA-452/F-03-021, page 3; 35 Ill. Adm. Code 101.630.

4. This permit is issued based upon the source being subject to the VOM control requirements of 35 Ill. Adm. Code 218, Subpart H: "Flexographic and Rotogravure Printing":

a. For the 2 controlled presses, the Permittee shall utilize a regenerative thermal oxidizer (RTO) which reduces captured VOM by at least 90%, meeting the requirements of 35 Ill. Adm. Code 218.401(c)(2).

b. For the 2 controlled presses, the Permittee shall utilize a regenerative thermal oxidizer (RTO) and capture system that provides at least an overall reduction of VOM emissions of at least 86.4%. This limit is as requested by the Permittee and exceeds 35 Ill. Adm. Code 218.401 (c)(4)(C).

c. For the 2 uncontrolled presses, the Permittee shall meet 35 Ill. Adm. Code 218.401(a) by not applying flexographic coatings or inks which exceed the following:

i. 40% VOM by volume of the coating and ink (minus water and any other exempt compounds from VOM), or

ii. 25% VOM by volume of the volatile content of the coating and ink.

d. The coatings and inks shall be tested by the VOM content test methods of [3]5 Ill. Adm. Code 218.105(a).

5. Emissions and operation of all printing shall not exceed the following limits:

Emission Unit	VOM* Usage		VOM* Emissions	
	(Lb/Mo)	(Ton/Yr)	(Lb/Mo)	(Ton/Yr)
#1 and #2 Presses	524	2.62	524	2.62
Comexi [#6] and #5 Presses	24,960	124.80	3,396	16.98
Cleanup and Other Solvents	980	4.90	980	4.90

* Volatile Organic Material

These limits are based on the maximum material usage at the maximum VOM content and an overall control efficiency of 86.4% for Comexi [#6] and #5 presses. Compliance with annual limits shall be determined from a running total of 12 months of data. Comp. Exh. 3 at 1-2.

The construction permit also included conditions that impose recordkeeping requirements, such as maintaining daily records concerning inks used and their VOM content, as well as a daily log of operating time for the capture system, control device, and monitoring equipment. Comp. Exh. 3 at 3 (Conditions 15 and 16). Packaging applied for a received a modified construction permit to increase VOM usage limits and VOM emission limits, but the combined VOM emission limits remained under a total of 25 tons per year. Tr.2 at 42, 44; Resp. Exh. 42.

On August 30, 2004, Packaging submitted a Federally Enforceable State Operating Permit (FESOP) application in lieu of the July 2, 2002 CAAPP permit application. Comp. Exh. 5 at 7; Comp. Exh. 1; Resp. Exh. 34; Tr.2 at 41, 88. Packaging submitted a revised FESOP application to IEPA in 2006. Tr.2 at 43-44; Resp. Exh. 39; Comp. Exh. 11; Tr.2 at 88. IEPA requested additional information of Packaging on April 14, 2009. Resp. Exh. 48; Tr.2 at 45. Packaging provided additional information to IEPA on May 13, 2009. Resp. Exh. 49; Tr.2 at 46.

VOM Emissions and Usage

In Packaging's July 2, 2002 CAAPP permit application, Packaging disclosed the following: presses 1 and 2 had maximum VOM emissions of 2.62 tons per year; press 4 had maximum VOM emissions of 51.8 tons per year; and press 5 had maximum VOM emissions of 121 tons per year. Comp. Exh. 9 at 2.1-11, 3.1-11, 4.1-11; *see also* Ans. at 18-19, 35. The same permit application disclosed that the typical VOM emissions for press 4 were 18.9 tons per year and 44.2 tons per year for press 5. Resp. Exh. 56 at 3.1-8, 4.1-8; *see also* Ans. at 18-19. Mr. Dominic Imburgia certified the CAAPP permit application as being "true, accurate and complete." Comp. Exh. 9 at 1.1-5. Packaging's VOM emissions in 2002 were in excess of 44 tons. Ans. at 2-3.

Packaging's Carol Stream facility emitted more than 10 tons of VOM from May 1 until September 30 of each year in at least 2000 through 2003. Resp. Exh. 50; Ans. at 26, 28; Resp. Exh. 52; Tr.1 at 248-49. Packaging's VOM emissions from 2000 through 2003 ranged from 13.75 to 20.73 tons during May through September. Resp. Exh. 50. Packaging's total monthly VOM usage was at least 31,880 pounds in August 2003, 40,823 pounds in September 2003, and 38,587 pounds in October 2003. Comp. Exh. 5 at 16; HO Exh. 1 at 1-2.

Regenerative Thermal Oxidizer (RTO)

Packaging purchased an RTO for $250,000 from Ship & Shore Environmental, Inc. to destroy VOM emissions. Tr.1 at 27, 36, 233; Comp. Exh. 5 at 14; Comp. Exh. 6; Resp. Exh. 55 at 2-3. Packaging installed the RTO and connected press 5 to the RTO in late 2003. Comp. Exh. 5 at 14; Tr. 2 at 46, 111; Resp. Exh. 28; Resp. Exh. 55 at 2-3. Packaging connected press 6 to the RTO in early 2004. Comp. Exh. 5 at 6, 14. On February 26, 2004, following construction of a Permanent Total Enclosure (PTE) around presses 5 and 6, a formal emissions test or "stack test" of the RTO system was conducted by ARI Environmental, Inc. Resp. Exh. 55 at 7; Resp. Exh. 28; Comp. Exh. 5 at 11; Tr.1 at 26-27; Tr.2 at 35-36, 38-39. Before the test was performed, IEPA was notified of the testing and its protocols and was invited to attend the testing. Tr.1 at 31. IEPA approved the results of the February 2004 stack test. Tr.1 at 46-47, 76-77; Tr.2 at 39; Resp. Exh. 29. IEPA did not approve any compliance test at the facility before the February

2004 stack test, and no other formal compliance test had been performed. Comp. Exh. 5 at 11-12; Tr.2 at 79-80. Press 5 achieved a lower emissions rate when connected to the RTO than when not connected to the RTO. Comp. Exh. 5 at 10. The RTO had capacity for a gas flow rate of 15,000 standard cubic feet per minute (scfm), large enough to accommodate a third press. Resp. Exh. 55 at 7; Tr.1 at 208; Tr. 2 at 36. The RTO does not have its own natural gas or electric meter. Tr.1 at 211.

Reporting

Until August 7, 2002, Packaging did not submit Annual Emissions Reports or "AERs" to IEPA for the years 1995 through 2001. Ans. at 10; Comp. Exh. 5 at 10; Resp. Exh. 13; Tr.1 at 58; Tr.2 at 11. Until June 12, 2003, Packaging did not submit complete and accurate Seasonal Emissions Reports (SERs) to IEPA for the years 2000, 2001, and 2002. Comp. Exh. 5 at 10; Resp. Exh. 24; Tr.1 at 58, 68; Tr.2 at 38. On May 13, 2009, Packaging submitted an application for inclusion in ERMS. Resp. Exh. 50; Tr. 1 at 209-10, 249-50; Tr.2 at 63-64.

Recordkeeping

Packaging took information dating back to 2001 from its Material Safety Data Sheets (MSDS) on inks and solvents, as well as its purchase orders and job tickets, and converted the information into ink usage data and provided the resulting information to IEPA on April 24, 2009. The submittal did not include records of ink usage from 1995 to 2001. Tr.1 at 195-98, 219-20, 241-45, 251, 261; Tr.2 at 26-27; Resp. Exh. 51. Packaging submitted information to the State on May 2, 2003 and April 24, 2009, concerning ink usage on presses 1 and 2. Comp. Exh. 13; Resp. Exh. 51.

Since August 13, 2003, Packaging has not maintained daily records of the following items at all times: (1) names of inks used and their VOM content, as applied (lb/gal) separately for controlled presses (5 and 6) and uncontrolled presses (1 and 2); and (2) a maintenance log for the capture system, RTO control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages. Comp. Exh. 5 at 16-17. Since August 13, 2003, Packaging has not maintained monthly records of the following items at all times: (1) names and amounts of solvents used for ink dilution (gal/mo) and their VOM and hazardous air pollutant or "HAP" content (lb/gal); (2) names and amounts of solvents used for clean-up (gal/mo) and their VOM and HAP content (lb/gal); and (3) VOM and HAP emissions for the preceding month (tons/month) and preceding 12 months (tons/year). *Id*. at 17.

Inspections and Enforcement

IEPA inspected Packaging's Carol Stream facility on October 5, 2001. Tr.1 at 56; Resp. Exh. 9. Previously, as part of IEPA's "outreach" to flexographic printers, IEPA mailed a July 2, 1997 letter to Packaging offering to assist the company in achieving compliance with air pollution regulations. Tr.1 at 47-49, 187; Comp. Exh. 4. Packaging did not receive the IEPA letter. Tr.1 at 183-85, 187, 192-93; Tr.2 at 25. Packaging was unaware of its air pollution control obligations before IEPA's October 5, 2001 inspection. Tr.1 at 186-87, 199; Tr.2 at 72-74. In November 2001, the company retained Mr. Trzupek "to evaluate the compliance status of

the facility." Resp. Exh. 55 at 3; Tr.1 at 23-24, 184-85, 199-201; Tr.2 at 7-8, 91; Resp. Exh. 11. Based on his evaluation, Mr. Trzupek informed Packaging in early to mid 2002 that presses 1, 2, and 5 met the "substantive" requirements of the flexographic printing rule while press 4 was noncompliant. Tr.1 at 200-01, 209; Tr.2 at 11-13, 15, 26, 91-92.

IEPA sent a violation notice to Packaging on January 25, 2002. Resp. Exh. 10; Tr.1 at 201. Prior to Packaging's receipt of the violation notice, Mr. Trzupek had begun preparing a CAAPP permit application for Packaging and gathering data for emissions reporting. Tr.2 at 8-10. On March 19, 2002, Packaging responded in writing to IEPA's violation notice. Resp. Exh. 11; Tr.1 at 57; Tr.2 at 9. Packaging met with IEPA in September 2002 to discuss the violation notice, and Packaging provided a "follow up" letter to IEPA dated December 16, 2002. Tr.1 at 57, 61-62, 185, 201-02; Tr.2 at 23; Resp. Exh. 12. Packaging submitted additional information to the Attorney General's Office on May 2 and May 8, 2003, following a March 20, 2003 meeting with IEPA. Comp. Exh. 13; Resp. Exhs. 18, 19

IEPA inspected Packaging's facility on April 22, 2004, and May 17, 2004. Comp. Exh. 5 at 17; Ans. at 42. At each inspection, Packaging failed to produce all records requested by the IEPA inspector. Comp. Exh. 5 at 17. IEPA issued Packaging a violation notice on July 7, 2004. Resp. Exh. 32. Packaging submitted to IEPA a proposed Compliance Commitment Agreement (CCA) on August 20, 2004. Resp. Exh. 32. After several revisions of the CCA, IEPA ultimately rejected the CCA on October 19, 2004, and sent Packaging a notice of intent to pursue legal action (NIPLA) on October 26, 2004. Resp. Exh. 33, 36, 37, 38; Tr.2 at 41, 43.

In 2002, after the first violation notice issued, Packaging requested that IEPA concur in the company seeking an adjusted standard from the flexographic printing rule. Comp. Exh. 5 at 15; Tr.1 at 202; Tr.2 at 24-26; 90-91. Packaging wished to obtain a "retroactive" adjusted standard. Tr.1 at 93, 96-97. Packaging never filed a petition for an adjusted standard with the Board. Comp. Exh. 5 at 15.

DISCUSSION

The Board first rules upon whether Packaging has committed the violations alleged in the amended complaint. The Board then addresses the People's requested relief, the civil penalty of which is the main source of contention between the parties.

Alleged Violations

The People bear "the burden of proving by a preponderance of the evidence that [Packaging] committed the alleged violations." People v. General Waste Services, Inc., PCB 07-45, slip op. at 12 (Apr. 7, 2011). A proposition is proved by a preponderance of the evidence when "it is more probably true than not." *Id.* Once the People present "sufficient evidence to make a *prima facie* case, the burden of going forward shifts to [Packaging] to disprove the propositions." *Id.* Packaging "admits that it was non-compliant with the Flexographic regulations and related provisions in the Act and Board regulations" (Resp. Br. at 2), but disputes many of the People's allegations.

Counts I and II: Constructing and Operating Emission Sources Without a Permit

In count I of the amended complaint, the People allege that Packaging violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) and Section 201.142 of the Board's air pollution regulations (35 Ill. Adm. Code 201.142) by failing to apply for or obtain construction permits from IEPA before commencing construction of new emission sources at the facility. Specifically, the People allege that Packaging installed four flexographic printing presses, four extruders, and one "curing oven" on various dates from 1989 to 1995 without construction permits. Am. Comp. at 2, 5. In count II, the People allege that from 1989 until July 2, 2002, Packaging violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) and Section 201.143 of the Board's air pollution regulations (35 Ill. Adm. Code 201.143) by operating one or more emission sources without applying for or obtaining operating permits from IEPA. *Id*. at 6.

Provisions at Issue. Section 9(b) of the Act provides that no person shall "[c]onstruct, install, or operate any equipment . . . capable of causing or contributing to air pollution . . . without a permit granted by the Agency . . . ." 415 ILCS 5/9(b) (2010). "Air pollution" is defined as follows:

> [T]he presence in the atmosphere of one or more contaminants[4] in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. 415 ILCS 5/3.115 (2010).

Section 201.142 of the Board's air pollution regulations provides that no person shall: "[c]ause or allow the construction of any new emission source . . . without first obtaining a construction permit from the Agency . . . ." 35 Ill. Adm. Code 201.142. Section 201.143 provides that no person shall "[c]ause or allow the operation of any new emission source . . . of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency . . . ." 35 Ill. Adm. Code 201.143. An "emission source" is "[a]ny equipment or facility of a type capable of emitting specified air contaminants to the atmosphere," while a "new emission source" is "[a]ny emission source, the construction or modification of which is commenced on or after April 14, 1972." 35 Ill. Adm. Code 201.102.

Board Analysis of Counts I and II. Packaging admits that without obtaining construction or operating permits from IEPA, the company installed and operated four extruders and four flexographic printing presses, all of which are capable of emitting VOM. Ans. at 2-3, 7, 18; Comp. Exh. 5 at 3-8. However, Packaging denies the allegations that the company installed a "curing oven" at the facility, maintaining that the "tunnel dryer" is an integral part of press 5. Ans. at 3, 6, 7, 9. The People's post-hearing brief arguments on counts I and II do not mention a curing oven. Br. at 2-4.

[4] A "contaminant" is "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165 (2010).

The Board finds that Packaging installed the following: two extruders in 1989; flexographic printing presses 1 and 4 and an extruder in 1992; and flexographic printing presses 2 and 5 and an extruder in 1995. Packaging operated the equipment from 1989 until at least 2002. Am. Ans. at 3, 7, 9, 18; Comp. Exh. 5 at 3-6. The equipment emits VOM. Even the water-based inks used in presses 1 and 2 contain low levels of VOM. VOM is a "contaminant" (415 ILCS 5/3.165 (2010)). VOM emissions cause ground-level ozone to form, which threatens human health.

It is uncontested that each piece of equipment constitutes a "new emission source" (35 Ill. Adm. Code 201.102) and is capable of causing or contributing to "air pollution" (415 ILCS 5/3.115 (2010)). There is also no dispute that Packaging constructed the emission sources without first obtaining construction permits from IEPA, and operated the sources without first obtaining operating permits from IEPA. The Board therefore finds that Packaging violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) and Sections 201.142 and 201.143 of the Board's air pollution regulations (35 Ill. Adm. Code 201.142, 201.143).[5]

Count III: Failing to Timely Submit Annual Emissions Reports

In count III of the amended complaint, the People allege that Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 201.302(a) and 254.137 of the regulations (35 Ill. Adm. Code 201.302(a), 254.137) by failing to submit Annual Emissions Reports or "AERs" for the years 1992 through 2001 until August 8, 2002. Am. Comp. at 9.

Provisions at Issue. Section 9(a) of the Act provides that no person shall "[c]ause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act." 415 ILCS 5/9(a) (2010). Section 201.302(a) of the Board's air pollution regulations provides that "[t]he owner or operator of any emission unit . . . shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions . . . ." 35 Ill. Adm. Code 201.302(a). An "emission unit" means "any part or activity at a stationary source that emits or has the potential to emit any air pollutant." 35 Ill. Adm. Code 211.1950. A "stationary source" is "any building, structure, facility, or installation that emits or may emit any air pollutant." 35 Ill. Adm. Code 201.6370. Section 254.137(a) of IEPA's regulations provides that "[a]ll Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place." 35 Ill. Adm. Code 254.137(a).

Board Analysis of Count III. Packaging's facility is a "stationary source" and Packaging's extruders and printing presses constitute "emission units." As the owner and operator of these emission units, Packaging was required to submit annual reports to IEPA

[5] The extruder exemption from State permitting requirements (35 Ill. Adm. Code 201.146(cc)) did not exist when Packaging installed or began operating the extruders. *See* Exemptions from State Permit Requirements, Amendments to 35 Ill. Adm. Code 201 and 211, R96-17 (June 5, 1997).

detailing the nature, specific emission units, and total annual quantities of all VOM emissions. Packaging admits that it did not submit Annual Emissions Reports for the years 1995 through 2001 until August 8, 2002. Ans. at 10; Comp. Exh. 5 at 10; Resp. Exh. 13.

These reports were due by May 1 of the year following the calendar year in which the emissions took place. By failing to timely submit these annual reports, the Board finds that Packaging violated Sections 201.302(a) and 254.137(a) of the regulations (35 Ill. Adm. Code 201.302(a), 254.137(a)). The Board further finds that by operating emission units and failing to submit Annual Emissions Reports on time, Packaging caused, threatened, or allowed the emission of contaminants so as to cause or tend to cause air pollution and so as to violate Section 201.302(a) of the Board's regulations. Packaging thereby violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010).

Count IV: Operating a Major Stationary Source Without a CAAPP Permit

In count IV of the amended complaint, the People allege that Packaging violated Sections 9(a), 39.5(5), and 39.5(6)(b) of the Act (415 ILCS 5/9(a), 39.5(5), 39.5(6)(b) (2010)) and Section 270.201(b) of the regulations (35 Ill. Adm. Code 270.201(b)) by failing to timely submit an application for a Clean Air Act Permit Program or "CAAPP" permit and nevertheless operating a major stationary source. Am. Comp. at 13-14.

Provisions at Issue. Section 9(a) of the Act prohibits causing, threatening, or allowing emissions of contaminants "so as to cause or tend to cause air pollution, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act." 415 ILCS 5/9(a) (2010).

The Act's Section 39.5 (415 ILCS 5/39.5 (2010)) concerns the CAAPP developed pursuant to Title V of the federal Clean Air Act (42 U.S.C. §§7661-76610). A "major source" is a "CAAPP source" and must obtain a "CAAPP permit." 415 ILCS 5/39.5(1), (2)(a)(i) (2010). A major source includes a "major stationary source," which includes, "[f]or ozone nonattainment areas, sources with the potential to emit . . . 25 tons or more per year [of volatile organic compounds or oxides of nitrogen] in areas classified as 'severe' . . . ." 415 ILCS 5/39.5(2)(c)(iii)(A) (2010). "Potential to emit" means:

> the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restriction on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. 35 Ill. Adm. Code 211.4970; *see also* 415 ILCS 5/39.5(1) (2010).

Section 39.5(5)(a) of the Act requires an owner or operator of a CAAPP source to "submit its complete CAAPP application consistent with the Act and applicable regulations." 415 ILCS 5/39.5(5)(a) (2010). Section 270.201(b) of IEPA's regulations provides that an owner or operator of a CAAPP source "with the following SIC [Standard Industrial Classification]

codes shall submit its initial complete CAAPP application no later than 6 months after the effective date of the CAAPP: 26 (paper and allied products); 27 (printing and publishing) . . . ." 35 Ill. Adm. Code 270.201(b). Section 39.5(6)(b) of the Act provides as follows:

> After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency. 415 ILCS 5/39.5(6)(b) (2010).

Board Analysis of Count IV. Packaging's facility is located in DuPage County. On November 15, 1990, the United States Environmental Protection Agency (USEPA) designated DuPage County as a "severe" nonattainment area under the 1-hour ozone standard. *See* 40 C.F.R. §81.314. DuPage County remained a severe ozone nonattainment area throughout the period of alleged violations. *Id*.; Tr.1 at 42.[6]

Packaging operated extruders and flexographic printing presses at various times from at least 1992 to 2002. One of Packaging's emission sources, press 4, had the "potential to emit" 51.8 tons of VOM per year beginning in 1992. Ans. at 18-19; Comp. Exh. 9 at 3.1-1, 3.1-8, 3.1-11.[7] Because Packaging had the potential to emit 25 tons or more of VOM per year in an area classified as a severe ozone nonattainment area, Packaging was a "major stationary source." *See* 415 ILCS 5/39.5(2)(c)(iii) (2010). As a major stationary source, Packaging was required to obtain a CAAPP permit. *See* 415 ILCS 5/39.5(2)(a)(i), (5)(a) (2010). Because Packaging was required to obtain a CAAPP permit, Packaging was a "CAAPP source." *See* 415 ILCS 5/39.5(1) (2010). As a CAAPP source that falls within SIC codes 26 and 27, Packaging was required to submit its complete CAAPP application no later than 6 months after the effective date of the CAAPP. *See* 415 ILCS 5/39.5(5)(a) (2010); 35 Ill. Adm. Code 270.201(b). USEPA granted interim approval for Illinois' CAAPP, effective March 7, 1995. *See* 40 C.F.R. 70, App. A. Therefore, Packaging was required to submit its initial complete CAAPP application no later than September 7, 1995. Packaging admits that it failed to timely submit its CAAPP application. Ans. at 18. Packaging did not submit a CAAPP application to IEPA until July 2, 2002. Comp. Exh. 5 at 6-7.

The Board finds that Packaging violated Section 39.5(5)(a) of the Act (415 ILCS 5/39.5(5)(a) (2010)) and Section 270.201(b) of the regulations (35 Ill. Adm. Code 270.201(b)) by failing to submit a complete CAAPP application on or before September 7, 1995. Under these circumstances, by operating as a CAAPP source after the September 7, 1995 deadline, Packaging

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[6] USEPA revoked the 1-hour ozone standard for all areas in Illinois, effective June 15, 2005. *See* 40 C.F.R. §81.314. USEPA re-classified DuPage County as a "moderate" nonattainment area under the 8-hour ozone standard as of June 15, 2004. *Id*.

[7] "USEPA consistently uses the term 'VOC' rather than 'VOM,' but both designations refer to the same matter." Definition of VOM Update, USEPA Regulations (January 1, 2009 through June 30, 2009), R10-7, slip op. at 5, n.2 (Jan. 7, 2010).

also violated the prohibition of Section 39.5(6)(b) of the Act (415 ILCS 5/39.5(6)(b) (2010)). The Board further finds that by operating a major stationary source without timely submitting a complete CAAPP permit application, Packaging caused, threatened, or allowed the emission of contaminants so as to cause or tend to cause air pollution in violation of Section 9(a) of the Act (415 ILCS 5/9(a) (2010)).

Count V: Constructing and Operating a Major Modification Without LAER

In count V, the People allege that between 1992 and 1998, Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 203.203 and 203.201 of the regulations (35 Ill. Adm. Code 203.201, 203.203) by installing and operating flexographic printing presses, four extruders, and one curing oven, constituting a "major modification," without first applying for and obtaining from IEPA a permit setting forth the Lowest Achievable Emission Rate or "LAER." Am. Comp. at 19. The People also allege in count V that beginning in 1992 through at least 1995, Packaging caused or allowed a major modification of a VOM source by constructing and operating flexographic printing presses, four extruders, and one curing oven without reviewing control equipment and process measures applied to the modification or otherwise determining whether the processes constituted LAER, in violation of Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 203.201, 203.301, and 203.601 of the regulations (35 Ill. Adm. Code 203.201, 203.301, 203.601). *Id*. at 19-20.

Provisions at Issue. Section 9(a) of the Act prohibits causing, threatening, or allowing emissions of contaminants "so as to cause or tend to cause air pollution, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act." 415 ILCS 5/9(a) (2010). Section 203.201 of the Board's air pollution regulations provides that:

> In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit volatile organic materials or nitrogen oxides. 35 Ill. Adm. Code 203.201.

Section 203.203(a) of the Board's regulations provides that "[a] construction permit is required prior to actual construction of a major new source or major modification." 35 Ill. Adm. Code 203.203(a).

Section 203.207(a) states that a "major modification" is "a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated a nonattainment area . . . ." 35 Ill. Adm. Code 203.207(a). Again, a "major stationary source" for a severe ozone nonattainment area emits or has the potential to emit VOM in an amount equal to or greater than 25 tons per year. 35 Ill. Adm. Code 203.206(b)(1)(C). "Any net emissions increase that is

significant for volatile organic material or nitrogen oxides shall be considered significant for ozone." 35 Ill. Adm. Code 203.207(b).

A "net emissions increase" is "the amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero." 35 Ill. Adm. Code 203.208. "Actual emissions" are defined in part as "the actual rate of annual emissions of a pollutant from an emissions unit as of a particular date," but "[f]or any emissions unit which has not begun normal operations on the particular date, the Agency shall presume that the potential to emit of the emissions unit is equivalent to the actual emissions on that date." 35 Ill. Adm. Code 203.104. For severe ozone nonattainment areas:

> an increase in emissions of volatile organic material or nitrogen oxides shall be considered significant if the net emissions increase of such air pollutant from a stationary source located within such area exceeds 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred. 35 Ill. Adm. Code 203.209(b) (effective Nov. 15, 1992).

> Section 203.301(c) of the Board's regulations addresses LAER:

> Except as provided in subsection (e) or (f) below, the owner or operator of a major modification shall demonstrate that the control equipment and process measures applied to the major modification will produce LAER. This requirement applies to each emissions unit at which a net increase in emissions of the pollutant has occurred or would occur as a result of a physical change or change in the method of operation. 35 Ill. Adm. Code 203.301(c).

The owner or operator must provide "a detailed showing that the proposed emission limitations constitute LAER." 35 Ill. Adm. Code 203.301(d). Further, "[n]o person shall cause or allow the operation of a new major stationary source or major modification subject to the requirements of Subpart C, except as in compliance with applicable LAER provisions established pursuant to Section 203.301 for such source or modification." 35 Ill. Adm. Code 203.601. Section 203.301(e) provides that if the major stationary source in a severe ozone nonattainment area does not emit or have the potential to emit 100 tons per year or more of VOM, and does not elect to provide internal offsets for the change, "such change shall be considered a major modification for purposes of this Part, but in applying this Section in the case of any such modification, the Best Available Control Technology (BACT), as defined in section 169 of the Clean Air Act, shall be substituted for the Lowest Achievable Emission Rate (LAER)." 35 Ill. Adm. Code 203.301(e).

Board Analysis of Count V. In its answer to count V, Packaging states:

> The control systems added to Packaging's operations on Presses 5 and 6 in 2003, consisting of a thermal oxidizer and Permanent Total Enclosure (PTE), would

> meet the LAER standard for flexographic printing. Further answering, Packaging denies that the two extruders in place in 1992 and Presses 1, 2 and 4 are subject to LAER. Ans. at 19; *see also id*. at 24, 25; Comp. Exh. 5 at 8-9.

Packaging also denied that "LAER was required for installation of . . . Press #5 & an extruder in 1995." Comp. Exh. 5 at 9. The People argue that Packaging was required to submit a "construction permit application demonstrating LAER prior to the construction of Presses 2 and 5 in 1995." Br. at 7.[8]

The Board has already found, in analyzing count IV, that press 4 had the potential to emit approximately 52 tons of VOM per year. Further, with the addition of press 4 in February 1992, Packaging became a major stationary source because the facility had the potential to emit more than 25 tons of VOM per year in a severe ozone nonattainment area. *See* 35 Ill. Adm. Code 203.206(b)(1)(C). It was not until 2003 that Packaging applied for and received a construction permit limiting its VOM emissions to less than 25 tons per year. Resp. Exh. 17, 26. Packaging did not submit a FESOP application until 2004. Comp. Exh. 1.

By installing presses 2 and 5 and an extruder in 1995, Packaging made a physical change to a major stationary source. Packaging represented in its 2002 CAAPP permit application that press 5 had typical emissions of 44.2 tons of VOM per year and maximum emissions of 121 tons of VOM per year. Comp. Exh. 9 at 4.1-11. The application was certified by Mr. Dominic Imburgia as being "true, accurate and complete." *Id*. at 1.1-5. Further, on October 31, 2005, Packaging conceded that "[b]eginning in 1995, Press No. 5 had the potential to emit approximately 120 tons per year of VOM uncontrolled, and approximately 39 tons per year of VOM when controlled." Ans. at 19. The Board finds that the physical change in 1995 would result in a significant net emissions increase of VOM and therefore a major modification.

Packaging did not obtain a construction permit from IEPA before installing the major modification. The Board accordingly finds that Packaging violated Sections 203.201 and 203.203(a) of the Board's regulations (35 Ill. Adm. Code 203.201, 203.203(a)). Packaging operated the major modification without demonstrating that any control equipment and process measures applied to the major modification constituted LAER. Comp. Exh. 5 at 8-9. Packaging concedes that it did not achieve LAER on press 5 before the 2004 installation of the RTO. Packaging makes no claim of having demonstrated or achieved BACT. The Board finds that Packaging violated Sections 203.301 and 203.601 of the Board's regulations (35 Ill. Adm. Code 203.301, 203.601).

The Board further finds that by constructing a major modification without permitting and operating a major modification absent a LAER or BACT demonstration, Packaging caused, threatened, or allowed the emission of contaminants so as to cause or tend to cause air pollution and so as to violate Board regulations. Packaging thereby violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)).

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[8] The People's post-hearing brief arguments on count V do not mention a "curing oven." Br. at 5-7. Packaging again denies the allegation of count V that the company installed a curing oven at the facility. Ans. at 24, 25.

Count VI: Failing to Timely Submit ERMS Application and Seasonal Emissions Reports

In count VI of the amended complaint, the People allege that Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 205.300, 205.310, and 254.501 of the regulations (35 Ill. Adm. Code 205.300, 205.310, 254.501) by failing to submit an Emissions Reduction Market System or "ERMS" baseline application to IEPA by March 1, 1998, and failing to submit seasonal emission information for the years 2000, 2001, and 2002 until May 16, 2003. Am. Comp. at 24.

Provisions at Issue. Section 9(a) of the Act prohibits causing, threatening, or allowing contaminant emissions so as to cause or tend to cause air pollution, either alone or combined with other contaminant sources, or so as to violate Board regulations. *See* 415 ILCS 5/9(a) (2010).

Part 205 of the Board's air pollution regulations (35 Ill. Adm. Code 205) implements ERMS pursuant to Section 9.8 of the Act (415 ILCS 5/9.8 (2010). ERMS is a "cap-and-trade" system for VOM sources in the "Chicago area," which includes DuPage County. *See* 35 Ill. Adm. Code 205.130. ERMS became effective on November 27, 1997. Under ERMS, the owner or operator of a "participating source" with "baseline emissions" of at least 10 tons of VOM was required to submit to IEPA "an ERMS application" by March 1, 1998. 35 Ill. Adm. Code 205.310(a)(1). A "participating source" is defined in ERMS as follows:

> a source operating prior to May 1, 1999, located in the Chicago area, that emits or has the potential to emit 25 tons per year or more of VOM or is required to obtain a CAAPP permit; and has baseline emissions of at least 10 tons . . . or seasonal emissions of at least 10 tons in any seasonal allotment period beginning in 1999. 35 Ill. Adm. Code 205.130.

The "seasonal allotment period" is "the period from May 1 through September 30 of each year," and "seasonal emissions" are the "actual VOM emissions at a source that occur during a seasonal allotment period." *Id*. "Baseline emissions" are "a participating source's VOM emissions for the seasonal allotment period based on historical operations as determined under Subpart C of this Part [and are] the basis of the allotment for each participating source." *Id*.

ERMS also requires the participating source to submit, "as a component of its Annual Emissions Report, seasonal emissions information" to IEPA for each "seasonal allotment period." 35 Ill. Adm. Code 205.300(a). The submittal is due by October 31 of each year for each participating source that generates VOM emissions from less than 10 emission units. *See* 35 Ill. Adm. Code 205.300(a)(1). Section 254.501 of IEPA's regulations specifies the required contents of a Seasonal Emissions Report or "SERs," which includes information on actual seasonal VOM emissions and information on hazardous air pollutants or "HAPs" that are also VOMs. *See* 35 Ill. Adm. Code 254.501.

Board Analysis of Count VI. Packaging's facility has had the potential to emit over 25 tons of VOM since at least 1992, as found above. Ans. at 3, 16. Packaging emitted more than

10 tons of VOM from May 1 through September 30 during at least each of the years 2000 through 2003. Resp. Exh. 50; Ans. at 26, 28; Resp. Exh. 52. Accordingly, Packaging was a participating source under ERMS. Packaging does not argue that its baseline emissions were less than 10 tons of VOM. Packaging was obligated to submit an ERMS application to IEPA by March 1, 1998. Packaging did not do so. Ans. at 30. The Board therefore finds that Packaging violated Section 205.310(a)(1) of the Board's regulations (35 Ill. Adm. Code 205.310(a)(1)).

As a participating source, Packaging was also required to submit seasonal emissions information to IEPA. *See* 35 Ill. Adm. Code 205.300(a). Because Packaging generated VOM emissions from less than 10 emission units (Ans. at 31), Packaging was required to submit the seasonal emissions information by October 31 of each year. *See* 35 Ill. Adm. Code 205.300(a)(1). Packaging did not submit complete and accurate seasonal emissions information to IEPA for the years 2000, 2001, and 2002 until June 12, 2003. Comp. Exh. 5 at 10; Resp. Exh. 24. Packaging therefore violated Section 205.300(a) of the Board's regulations (35 Ill. Adm. Code 205.300(a)). In not providing the seasonal emissions information by October 31 of each year, Packaging necessarily failed to provide the information required by Section 254.501 of IEPA's regulations. Accordingly, the Board further finds that Packaging violated 35 Ill. Adm. Code 254.501.

The Board also finds that by operating as a participating source and not timely submitting an ERMS application or Seasonal Emissions Reports, Packaging caused, threatened, or allowed the emission of contaminants so as to cause or tend to cause air pollution and so as to violate Sections 205.300(a) and 205.310(a)(1) of the Board regulations. Packaging thereby violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)).

Counts VII and VIII: Failing to Demonstrate Compliance with and Maintain Records under Flexographic Printing Rule

In count VII of the amended complaint, the People allege that from September 27, 1993 until July 11, 2005, Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Section 218.401 of the Board's regulations (35 Ill. Adm. Code 218.401 (2010)) by applying inks with a VOM content in excess of 40% without performing any analysis of ink usage or otherwise demonstrating compliance with Section 218.401 of the flexographic printing rule. Am. Comp. at 26, 28-29. In count VIII, the People allege that from September 27, 1993 until July 11, 2005, Packaging violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)) and Sections 218.404(c) and (d) of the Board's regulations (35 Ill. Adm. Code 218.404(c), (d)) by failing to keep and maintain records of the volume, name, identification number, VOC content, and daily weighted VOC content of inks used at Packaging's facility. *Id*. at 31.

Provisions at Issue. Section 9(a) of the Act prohibits causing, threatening, or allowing contaminant emissions so as to cause or tend to cause air pollution, either alone or combined with other contaminant sources, or so as to violate Board regulations. *See* 415 ILCS 5/9(a) (2010).

Pursuant to the Reasonably Available Control Technology (RACT) requirements of Section 182(b)(2) of the federal Clean Air Act (42 U.S.C. §7511a(b)(2)), the Board established

VOM emissions standards for flexographic printing facilities located in the Chicago ozone nonattainment area, which includes DuPage County.[9] A source is subject to the flexographic printing rule if the source's flexographic printing lines "have a potential to emit [25 tons] or more of VOM per year." 35 Ill. Adm. Code 218.402(a)(2). Compliance with the rules was required by March 15, 1995. *See* 35 Ill. Adm. Code 218.106(c).[10]

Under the flexographic printing rule, no owner or operator of a subject flexographic printing line "shall apply at any time any coating or ink unless the VOM content does not exceed" either "[f]orty percent VOM by volume of the coating and ink" or "[t]wenty-five percent VOM by volume of the volatile content in the coating and ink." 35 Ill. Adm. Code 218.401(a)(1). Further, "[c]ompliance with this Section must be demonstrated through the applicable coating or ink analysis test methods and procedures . . . and the recordkeeping and reporting requirements . . . ." 35 Ill. Adm. Code 218.401(a).

However, "[a]s an alternative to compliance" with the 40% and 25% VOM content requirements (35 Ill. Adm. Code 218.401(a)), an owner or operator may comply by either using a "weighted averaging" of compliant and noncompliant inks (35 Ill. Adm. Code 218.401(b)) or equipping the flexographic printing line with "a capture system and control device" (35 Ill. Adm. Code 218.401(c)). The capture system and control device must meet numerous specifications, such as "reduc[ing] the captured VOM emissions by at least 90 percent by weight" through carbon adsorption or incineration or otherwise providing "90 percent control device efficiency," "provid[ing] an overall reduction in VOM emissions of at least . . . 60 percent," and having "monitoring equipment . . . installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use." 35 Ill. Adm. Code 218.401(c)(1)(A), (c)(1)(B)(iii), (c)(5). Further, the capture system and control device must be:

> operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with this subsection by using the applicable capture system and control device test methods and procedures . . . and by complying with the recordkeeping and reporting requirements . . . . 35 Ill. Adm. Code 218.401(c)(6).

Section 218.404 of the Board's regulations (35 Ill. Adm. Code 218.404) sets forth detailed recordkeeping requirements, the applicability and contents of which vary depending upon whether the facility remains under Section 218.401(a) or seeks alternative compliance through Section 218.401(b) or (c). For example, as part of demonstrating compliance with the 40% and 25% VOM content requirements, a source must collect and record, among other things, the "VOM content of each coating and ink as applied each day on each printing line," and "maintain the information at the source for a period of three years." 35 Ill. Adm. Code

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[9] *See* Reasonably Available Control Technology for Major Sources Emitting Volatile Organic Materials in the Chicago Ozone Nonattainment Area: 25 Tons (Amendments to 35 Ill. Adm. Code Parts and 211 and 218), R93-14 (Jan. 6, 1994).

[10] Final notice of these rules was published in the *Illinois Register* on February 4, 1994. *See* 18 Ill. Reg. 1945 (Feb. 4, 1994).

218.404(c). Subsection (d) of Section 218.404 addresses recordkeeping when alternative compliance is sought through weighted averaging, while Subsection (e) of Section 218.404 addresses recordkeeping when alternative compliance is sought through a capture system and control device. *See* 35 Ill. Adm. Code 218.404(d), (e).

Board Analysis of Counts VII and VIII. Packaging's four flexographic printing lines (presses 1, 2, 4, and 5) had the potential to emit more than 25 tons of VOM per year. Ans. at 18-19, 35; Comp. Exh. 9 at 3.1-1, 3.1-8. Therefore, Packaging was a source subject to the flexographic printing rule. Packaging was prohibited from applying inks with VOM content in excess of the 40% or 25% limit of Section 218.401(a) unless the company complied with either the "weighted averaging" alternative of Section 218.401(b) or the "capture system and control device" alternative of Section 218.401(c).

Packaging concedes that presses 4 and 5 did not use inks compliant with Section 218.401(a). Comp. Exh. 5 at 12-13. For these presses, Packaging admits to applying inks with a VOM content in excess of 40% by volume of the ink (Ans. at 36), as alleged by the People (Am. Comp. at 28). Packaging's inks would not comply with Section 218.401(b) "weighted averaging." A large percentage of Packaging's customers require "high-slip" film, which necessitates solvent-based inks. Packaging did not have enough business for "low-slip or no-slip" film to take advantage of "weighted averaging." Resp. Exh. 55 at 6-7

If Packaging chose a capture system and control device as its method of compliance, the company was required to demonstrate their effectiveness through applicable test methods and procedures found in 35 Ill. Adm. Code 218.105(c)-(f). *See* 35 Ill. Adm. Code 218.401(c)(6). Press 4 never had a control device. Comp. Exh. 5 at 14. Packaging argues that press 5 was adequately controlled by the press' tunnel dryer before press 5 was connected to the RTO (Resp. Br. at 8).

For press 5 to have qualified as having a compliant capture system and control device under 35 Ill. Adm. Code 218.401(c), Packaging was required to demonstrate that the tunnel dryer provided at least a 90% destruction efficiency. *See* 35 Ill. Adm. Code 218.401(c)(1)(A). In addition, the printing line was required to be equipped with a capture system and control device that provides an overall reduction in VOM emissions of at least 60%. *See* 35 Ill. Adm. Code 218.401(c)(1)(B)(iii). Packaging was also required to have monitoring equipment and demonstrate compliance by using the applicable test methods and procedures. *See* 35 Ill. Adm. Code 218.401(c)(5), (c)(6). Packaging performed only an "informal emissions test" on the press 5 tunnel dryer (Resp. Br. at 8), which Packaging acknowledges did not satisfy these regulations (Resp. Exh. 55 at 3; Tr.1 at 26-27). Finally, contrary to Packaging's argument (Resp. Br. at 7), the absence of a permit condition requiring the company to perform a formal emissions test on the tunnel dryer made Packaging no less obligated to do so if Packaging was seeking "capture and control" alternative compliance.[11]

[11] Packaging performed a formal emissions test on the press 5 RTO to IEPA's satisfaction in 2004. Resp. Exh. 28.

The Board finds by applying noncompliant inks to presses 4 and 5 and failing to establish alternative compliance through Section 218.401(b) or (c), Packaging violated Section 218.401(a) of the flexographic printing rule (35 Ill. Adm. Code 218.401(a)).

Packaging contends that on presses 1 and 2, it did not use inks with VOM content in excess of 40%. Ans. at 36. Packaging used water-based inks on presses 1 and 2. However, for presses 1, 2, 4, and 5, Section 218.401(a) not only prohibited Packaging from applying noncompliant inks, it required Packaging to demonstrate compliance through ink analysis testing under Section 218.105(a) and recordkeeping under Section 218.404(c). *See* 35 Ill. Adm. Code 218.105(a), 218.401(a), 218.404(c). For example, Packaging was required to record "[t]he name and identification number of each coating and ink as applied on each printing line, [and] [t]he VOM content of each coating and ink as applied each day on each printing line." 35 Ill. Adm. Code 218.404(c)(1)(A)-(B). Packaging failed to provide records specifying 1995-2001ink usage for presses 1 and 2. Tr.1 at 244-45; Resp. Exh. 51. Nor does Packaging suggest that it performed ink analysis testing on press 1 or 2 pursuant to Section 218.105(a) during this timeframe. Packaging concedes that presses 4 and 5 did not use compliant inks. It follows that for those two presses, the company made no demonstration of compliance with the VOM content requirement through ink analysis testing or records of ink usage.

The Board finds that by failing to demonstrate compliance through required testing and recordkeeping, Packaging violated Section 218.401(a) of the flexographic printing rule (35 Ill. Adm. Code 218.401(a)). The Board further finds that by not complying with recordkeeping requirements, Packaging violated Section 218.404(c) (35 Ill. Adm. Code 218.404(c)). The Board also finds that by applying noncompliant inks, failing to establish alternative compliance, and failing to demonstrate compliance through required testing and recordkeeping, Packaging caused, threatened, or allowed the emission of contaminants so as to cause or tend to cause air pollution and so as to violate Board regulations. Packaging thereby violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)).

Count IX: Exceeding Permitted VOM Usage Limits

In count IX, the People allege that Packaging violated Condition 5 of Packaging's 2003 construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by exceeding the permitted VOM usage limits for the months of August through October 2003, December 2003, and April through July 2004. Am. Comp. at 34.

Provisions at Issue. Section 9(b) of the Act provides that no person shall "[c]onstruct, install, or operate any equipment . . . capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit." 415 ILCS 5/9(b) (2010). IEPA issued construction permit 03030016 to Packaging on August 13, 2003. Comp. Exh. 3. Condition 5 of the permit provides in pertinent part that operation of all printing must not exceed the following limits:

Emission Unit	VOM Usage (Lb/Mo)
#1 and #2 Presses	524
Comexi [#6] and #5 Presses	24,960
Cleanup and Other Solvents	980

Id. at 2.

Board Analysis of Count IX. Based upon the three usage limits above from Condition 5 of Packaging's construction permit, Packaging was not allowed to use more than 26,464 pounds of VOM per month. Comp. Exh. 3 at 2. Packaging denies the People's allegation of there having been 8 months of usage exceedences. Ans. at 40. Packaging admits, however, to having used VOM in excess of 26,464 pounds in each of several months in 2003. Comp. Exh. 5 at 16; HO Exh. 1 at 1-2. The Board therefore finds that Packaging exceeded one or more of the permitted limits on monthly VOM usage. Accordingly, Packaging violated Condition 5 of the construction permit and thereby violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010)).

Count X: Failing to Demonstrate Compliance with Permit Condition 4(c)

In count X, the People allege that Packaging violated Condition 4(c) of the 2003 construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by using noncompliant inks and failing to demonstrate through recordkeeping or other means that Packaging did not use inks with more than 40% VOM on presses 1 and 2. Am. Comp. at 35.

Provisions at Issue. For equipment capable of causing or contributing to air pollution, Section 9(b) of the Act prohibits anyone from violating IEPA permit conditions concerning the installation or operation of the equipment. *See* 415 ILCS 5/9(b) (2010). Condition 4(c) of construction permit 03030016 provides:

> For the 2 uncontrolled presses [presses 1 and 2], the Permitee shall meet 35 Ill. Adm. Code 218.401(a) by not applying flexographic coatings or inks which exceed the following:
>
> (i) 40% VOM by volume of the coating and ink (minus water and any other exempt compounds from VOM), or
>
> (ii) 25% VOM by volume of the volatile content of the coating and ink.

Comp. Exh. 3 at 2.

Board Analysis of Count X. Section 218.401(a) of the flexographic printing rule (35 Ill. Adm. Code 218.401(a)) imposes the 40% and 25% VOM content requirements, which are reflected in Condition 4(c) of the construction permit. Comp. Exh. 3 at 2. Section 218.401(a) requires that "[c]ompliance with this Section [218.401(a)] must be demonstrated through the applicable coating or ink analysis test methods and procedures specified in Section 218.105(a) of this Part and the recordkeeping and reporting requirements specified in Section 218.404(c) of this Part." 35 Ill. Adm. Code 218.401(a). The construction permit likewise requires a compliance demonstration. Condition 4(d) of the permit provides that "[t]he . . . and inks shall be tested by the VOM content test methods of [3]5 Ill. Adm. Code 218.105(a)." Comp. Exh. 3 at

2. Condition 15 of the permit requires Packaging to maintain daily records of the VOM content of inks applied to the uncontrolled presses, as does Section 218.404(c) (35 Ill. Adm. Code 218.404(c)). Comp. Exh. 3 at 4.

The two uncontrolled presses are presses 1 and 2. IEPA inspected Packaging's facility on April 22, 2004, and Packaging did not produce test results or other records to demonstrate compliance with the VOM content requirement of permit Condition 4(c). Presses 1 and 2 did not use inks with VOM content in excess of 40%, but instead used low-VOM water-based inks. However, Packaging admits that since the construction permit issued on August 13, 2003, the company has not at all times maintained daily records of the names of inks used and their VOM content as applied separately for presses 1 and 2. Resp. Exh. 51; Comp. Exh. 5 at 16-17. The controlled presses, which use inks with VOM in excess of 40%, are not the subject of Condition 4(c).

The Board observes that in count X of the amended complaint, the People do not allege a violation of permit Condition 4(d) or 15. The People had alleged a violation of Condition 4(d) in the now-dismissed count XI, and the People do allege a violation of Condition 15 in count XII, which is discussed below. In count X, however, the only permit condition allegedly violated is Condition 4(c). It is permit Condition 4(d) that requires Packaging to perform ink analysis testing, and Condition 15 that requires Packaging to keep daily ink usage records. Unlike 218.401(a) of the flexographic printing rule (35 Ill. Adm. Code 218.401(a)), Condition 4(c), by its terms, does not impose a compliance demonstration requirement. Condition 4(c) simply prohibits Packaging from applying noncompliant inks. The record does not establish that Packaging used noncompliant inks on press 1 or 2. The Board therefore finds no violation of Condition 4(c) and accordingly no violation of Section 9(b) of the Act here (415 ILCS 5/9(b) (2010)).

Count XII: Failing to Maintain Records Required by Permit Conditions 15 and 16

In count XII, the People allege that from August 13, 2003 until at least April 22, 2004, Packaging violated Conditions 15 and 16 of the company's 2003 construction permit and Section 9(b) of the Act (415 ILCS 5/9(b) (2010)) by failing to keep daily records of the names and VOM content of inks used, maintain daily maintenance records of its emission capture system, and keep monthly records of inks used, VOM and HAP content, and VOM and HAP emissions. Am. Comp. at 39.

Provisions at Issue. Section 9(b) of the Act prohibits any person from installing or operating "any equipment . . . capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit." 415 ILCS 5/9(b) (2010). Conditions 15 and 16 of construction permit 03030016 provide:

> (15) The Permittee shall maintain daily records of the following items:
>
> > (a) Names of inks used and their VOM content, as applied (lb/gal) separately for controlled and uncontrolled presses.

(b) Control device monitoring data.

(c) A log of operating time for the capture system, control device, monitoring equipment, and the associated printing line.

(d) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(16) The Permittee shall maintain monthly records of the following items:

(a) Names and amounts of inks used (gal/mo) and their VOM and HAP content, as applied separately for controlled and uncontrolled presses (lb/gal).

(b) Names and amounts of solvents used for the ink dilution (gal/mo) and their VOM and HAP content (lb/gal).

(c) Names and amounts of solvents used for clean-up (gal/mo) and their VOM and HAP content (lb/gal).

(d) VOM and HAP emissions for preceding month (tons/month) and preceding 12 months (tons/year). Comp. Exh. 3 at 4-5.

Board Analysis of Count XII. The People assert that when IEPA inspected Packaging's facility on April 22, 2004 and May 14, 2004, Packaging was unable to produce the required records for the inspector. Comp. Br. at 16. Packaging argues that it "has always maintained records of its ink usage and the VOM and HAP content associated with it operations vis-à-vis MSDS sheets and its daily production records (*i.e.*, job tickets)." Resp. Br. at 17. Packaging concedes that "the form in which it has maintained its records was not in the manner that [IEPA] would have preferred," but insists that the records "contained the necessary data." *Id*. The People reply that Packaging was required to maintain "records compiled from the raw information," not simply the raw information. Reply Br. at 5.

Packaging admits that when IEPA inspected the facility on April 22, 2004 and May 14, 2004, Packaging could not produce all records requested. Comp. Exh. 5 at 17-18. Packaging admits that it has not consistently maintained daily records of (1) the names of inks used and their VOM content, as applied (lb/gal) separately for controlled and uncontrolled presses; or (2) a maintenance log for the capture system, RTO control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages. *Id*. at 16-17. Packaging further admits that it has not consistently maintained monthly records of (1) the names and amounts of solvents used for ink dilution (gal/mo) and their VOM and HAP content (lb/gal); (2) the names and amounts of solvents used for clean-up (gal/mo) and their VOM and HAP content (lb/gal); or (3) VOM and HAP emissions for the preceding month

(tons/month) and the preceding 12 months (tons/year). *Id*. at 17. The Board finds that by failing to keep required daily and monthly records, Packaging violated Conditions 15 and 16 of the construction permit and thereby violated Section 9(b) of the Act (415 ILCS 5/9(b) (2010)).

Summary of Proven Violations

Packaging violated the following provisions of the Act: 415 ILCS 5/9(a), 9(b), 39.5(5)(a), and 39.5(6)(b) (2010). Packaging violated the following provisions of the Board's regulations: 35 Ill. Adm. Code 201.142, 201.143, 201.302(a), 203.201, 203.203(a), 203.301, 203.601, 205.300(a), 205.310(a)(1), 218.401(a), and 218.404(c). Packaging violated the following provisions of IEPA's regulations: 35 Ill. Adm. Code 254.137(a), 254.501, and 270.201(b). Packaging violated Conditions 5, 15, and 16 of construction permit 03030016 issued on August 13, 2003. The People failed to prove any violation of the Condition 4(c) of the 2003 construction permit.

Relief

Having found that Packaging violated the Act, regulations, and permit conditions, the Board now decides the appropriate relief. The People ask for two forms of relief. First, the People request that the Board impose a civil penalty of $861,274 on Packaging. Br. at 2. Second, the People ask the Board to issue an order requiring Packaging to cease and desist from future violations. *Id*.

The Board considers the factors of Section 33(c) of the Act (415 ILCS 5/33(c) (2010)) in determining whether a civil penalty should be imposed and whether a cease and desist order should issue. If the Board decides that a civil penalty is warranted, the Board then considers the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)) to determine the appropriate penalty amount.

Civil Penalty; Cease and Desist

The factors set forth in Section 33(c) of the Act (415 ILCS 5/33(c) (2010)) bear on the reasonableness of the circumstances surrounding the violations. Section 33(c) reads as follows:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
>
> (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> (ii) the social and economic value of the pollution source;
>
> (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

(iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

(v) any subsequent compliance. 415 ILCS 5/33(c) (2010).

The Board addresses the Section 33(c) factors in turn.

The Character and Degree of Injury to or Interference With the Protection of the Health, General Welfare, and Physical Property of the People. The People state that Packaging was a major source of VOM, an "air contaminant that results in ground-level ozone formation" which "poses a threat to human health" by, among other things, worsening bronchitis, emphysema, and asthma, reducing lung function, and inflaming lung linings. Br. at 17, citing http://www.epa.gov/air/ozonepollution/healthhtml (updated on May 9, 2008). According to the People, by violating the flexographic printing rule, Packaging "increased the Facility's net emissions of VOM." *Id*. at 17-18. Packaging's violations in an ozone nonattainment area that was classified as "severe," the People continue, "adversely affected the ozone nonattainment area and air quality in DuPage County" and increased the "potential threat . . . to the NAAQS [National Ambient Air Quality Standard]." *Id*. at 18. The People stress that the "cumulative impacts on air quality could be severe if each source in the nonattainment area violated these Board emission standards for VOM." *Id*. The People maintain that Packaging's noncompliance "for at least eight years" impeded IEPA's efforts to "reduce the sources of VOM levels" which "seriously interfered with the 'protection of the health, general welfare and physical property of the people.'" *Id*., quoting 415 ILCS 5/33(c)(i) (2010).

Packaging argues that its VOM emissions did not interfere with protecting the health, general welfare, or physical property of the people, "especially in light of the fact that the Chicago Nonattainment area came into compliance with the 1-hour ozone standard during Packaging's noncompliance period." Resp. Br. at 22. Packaging maintains that because DuPage County was designated as "severe" nonattainment for only a portion of the time during which the violations occurred, Packaging was not a threat to the NAAQS. *Id*. at 23.

Packaging further asserts that it was in "substantive compliance with all emissions limitations" once press 4 was shut down, as presses 1 and 2 used only water-based inks and press 5 "was not emitting VOM emissions in quantities in excess of the applicable regulations based on Mr. Trzupek's investigations." Resp. Br. at 22. In reply, the People note that Mr. Bloomberg, Manager of the Compliance Unit of IEPA's Bureau of Air, testified that Mr. Trzupek's "testing was 'not even close' to being an acceptable verification of compliance." Reply Br. at 9, citing Tr.1 at 45-46.

The Board observes that the flexographic printing rule for major sources was adopted to help attain the ozone NAAQS in the Chicago area. VOM is designated as a pollutant under the federal Clean Air Act. The health threats due to ground-level ozone resulting from VOM emissions are well known. USEPA's revocation of the 1-hour ozone standard in Illinois did not take effect until June 15, 2005, and USEPA's re-classification of DuPage County as a

"moderate" nonattainment area under the 8-hour ozone standard did not become effective until June 15, 2004. DuPage County accordingly remained a "severe" ozone nonattainment area throughout the period during which Packaging violated the flexographic printing rule with noncompliant inks. For some seven to nine years, Packaging operated presses 4 and 5 using solvent-based inks with VOM content in excess of 40% by volume of the ink, all without establishing any form of alternative compliance. Packaging's noncompliance threatened DuPage County's air quality.

Packaging operated a major stationary source without a CAAPP permit and made a major modification without demonstrating LAER or BACT. These are federally-mandated protections. Typical VOM emissions were 18.9 tons per year for press 4 and 44.2 tons per year for press 5. Press 4 was operated from 1992 until it was shut down in 2002 and never had VOM emission control. Press 5 began operation in 1995. Mr. Trzupeck's "informal emissions test" on the press 5 tunnel dryer did not comply with Board's testing protocols for determining capture and destruction efficiency. Further, the results of this informal testing were not presented to the State until March 31, 2003, eight years after the flexographic printing rule went into effect. Packaging violated the flexographic printing rule from its effective date on March 15, 1995, at least until the RTO stack test demonstration was made on press 5 in February 2004.

Packaging did not participate in ERMS, which is designed to control VOM emissions during the May through September season when ozone problems are at their worst. Packaging also deprived IEPA of detailed information about the Carol Steam facility's emission sources for years by not timely submitting permit applications and emissions reports and by not keeping compliant records. As the People argue, permits:

> "ensure that the State knows what equipment is at sources, how it's being controlled, what's being emitted and whether or not those emissions units are complying with environmental regulations." Annual emissions reports allow the Agency to know the amount and location of air pollutants entering the atmosphere. All of these inform the Agency in its essential functions, including the development of new regulations and compliance with federal requirements, such as the NAAQS. Br. at 24, quoting Mr. Bloomberg's testimony, Tr.1 at 52.

Under Section 33(c)(i), the Board finds that the character and degree of interference with protecting the people's health and general welfare weighs against Packaging.

The Social and Economic Value of the Pollution Source. According to the People, "a facility that operates in violation of the Act and Board regulations is a social and economic detriment." Br. at 18. Packaging responds that the company "has a positive social and/or economic value" because it is "a small-family owned business" that was started about 34 years ago and that employs 100 people at its Carol Stream facility. Resp. Br. at 23. The People reply that Packaging is not "'solely family owned.'" Reply Br. at 6, n.9.

To conclude that a pollution source is necessarily a "social and economic detriment" because it committed a violation risks effectively reading this factor out of the Act. The Board considers the Section 33(c) factors in cases like this one only after finding a violation.

Packaging's Carol Stream facility had approximately 130 employees in 2002 and employed 100 people in 2009. Packaging has been in business for over three decades. The People concede that a company, like Packaging, that "employs people and supplies products to the open market has a degree of social and economic value." Br. at 18. The Board weighs the Section 33(c)(ii) factor in favor of Packaging. *See* People v. Panhandle Eastern Pipe Line Co., PCB 99-191, slip op. at 24-26 (Nov. 15, 2001).

The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved. The People assert that Packaging's facility is suitable for the site and surrounding area, "provided it is operated in compliance with the Act and Board Air Pollution Regulations." Br. at 19. According to the People, Packaging "contributed excess VOM to an area that was not in compliance with the NAAQS for ozone." *Id*. The People conclude that "during the time Respondent was out of compliance, its Facility was not suitable to the area in which it was operating." *Id*.

According to Packaging, this Section 33(c) factor "requires that the Board look at the location of the source and determine its suitability to the area, including the question of priority of location." Resp. Br. at 24. Packaging states that its Carol Stream facility is suitably located in an industrial/commercial area of DuPage County. *Id*. Describing the People's argument as "exceptionally strained," Packaging asserts that "[s]imply being out of compliance . . . does not somehow render a facility 'unsuitable' for its location as contemplated by the Section 33(c) factors." Resp. Br. at 24. Packaging argues that the People's "novel interpretation of this factor would essentially render it a nullity, as a facility would always be unsuitable for its location when noncompliant." *Id*.

The Board finds that a violation alone does not mean the pollution source is unsuitable to the area in which it is located. Packaging's facility was suitable to its industrial/commercial area. This suitability of location was offset, however, because Packaging's many and lengthy violations took place in DuPage County when the area was classified as being in severe nonattainment for ozone. The Board therefore weighs the Section 33(c)(iii) factor neither for nor against Packaging.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges, or Deposits Resulting from Such Pollution Source. The People assert that applying for and obtaining construction and operating permits from IEPA, including CAAPP permits, is a "simple, low-cost measure that is not unduly burdensome." Br. at 19-20. Likewise, participating in ERMS and monitoring seasonal emissions "does not impose an unreasonable cost or time investment on a company like Packaging," according to the People. *Id*. at 20. The People stress that Packaging itself blames its noncompliance on "ignorance of the law," not an inability to comply. *Id*. That compliance is feasible is evidenced by Packaging having taken the "actions required for compliance" following IEPA's October 2001 inspection. *Id*. The People also state that "only three companies ultimately sought adjusted standards to obtain an extension on the [flexographic printing rule] compliance deadline, and even those companies have since installed control devices meeting the VOM standards." *Id*.; *see also* Tr.1 at 50.

Packaging disputes the People's claims about the simplicity and cost of compliance. Packaging recounts its compliance efforts since 2001, including submitting a revised FESOP application in 2006, and notes that the company "has *yet* to receive its operating permit." Resp. Br. at 25-26 (emphasis in original). Packaging cites the testimony of Mr. Trzupek, "an expert with over 25 years of experience." *Id*. at 26. Mr. Trzupek described the rules as "very complicated." *Id*., quoting Tr.2 at 7-8. Mr. Trzupek also testified that preparing a CAAPP permit application is time-consuming and may cost "several thousands to several tens of thousands of dollars to prepare." *Id*., quoting Tr.2 at 10. Finally, according to Packaging, the Board acknowledged in the BEMA AS 00-11, VONCO AS 00-12, and Formel AS 00-13 adjusted standard proceedings that "it was not technically or economically feasible for these smaller facilities to install the necessary add-on control technology" unless they expanded their businesses to spread the cost across larger operations. *Id*.[12] Packaging argues that it was in the same position. *Id*. "The process of becoming aware of the new regulations and then achieving compliance," according to Packaging, "was not as simple as the Complainant would like the Board to believe." *Id*. at 27

The Board notes that this factor calls for an assessment of the technical practicability and economic reasonableness of compliance. The test under this factor is not whether it was "simple" to comply. Nor does Packaging claim that any public notices required by law were not given for proposed or final rules. Packaging applied for a CAAPP permit in July 2002 and received a completeness determination. Packaging obtained a construction permit for the proper pollution control device in 2003. Packaging paid for and installed the RTO in 2003. Packaging then chose to submit a FESOP application in 2004, and then submitted a revised FESOP application in 2006. That these steps may not have been easy or inexpensive does not mean that they were technically infeasible or economically unreasonable. Packaging's reliance on adjusted standards from Section 218.401 obtained by other flexographic printers is misplaced. An adjusted standard is petitioner-specific relief and is granted only when the petitioner has met an exacting burden of proof. *See* 415 ILCS 5/28.1(b), (c) (2010); 35 Ill. Adm. Code 104, Subpart D. Packaging has made no such demonstration here and never filed a petition with the Board for adjusted standard relief. The Board finds that it was technically feasible and economically for Packaging to have limited its VOM emissions pursuant to one of the Section 218.401 compliance options and to have timely participated in the required permitting, reporting, recordkeeping, and compliance demonstrations. The Board weighs the Section 33(c)(iv) factor against Packaging.

Any Subsequent Compliance. The People acknowledge that Packaging "took steps to achieve compliance with its regulatory obligations after [IEPA] inspected the facility in 2001." Br. at 20. According to the People, however, Packaging "achieved compliance only after continuously violating the Act for at least ten years, from 1992 to 2002." *Id*.

[12] Referencing the following proceedings before the Board: Petition of BEMA Film Systems, Inc. for an Adjusted Standard from 35 Ill. Adm. Code Sections 218.401(a), (b), and (c), AS 00-11 (Jan. 18, 2001); Petition of VONCO Products, Inc. for an Adjusted Standard from 35 Ill. Adm. Code Sections 218.401(a), (b), and (c), AS 00-12 (Jan. 18, 2001); Petition of Formel Industries, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 218.401(a), (b), and (c), AS 00-13 (Jan. 18, 2001). *See* Resp. Exhs. 5-7.

Packaging argues that "[u]pon learning of its non-compliance" based upon the October 2001 IEPA inspection, the company "immediately took steps towards compliance even before receiving any [violation notice]." Resp. Br. at 27. Packaging asserts that the company "has been in substantive compliance with the Flexographic rules since it decommissioned Press #4 in December of 2002 and submitted the required documentation, including a CAAPP permit, ERMS, and SERs." *Id*. Packaging also connected press 5 to the RTO, so "any differences in opinion regarding whether Press #5 was compliant with the Flexographic VOM emission rules has also been addressed." *Id*. "The only outstanding issue," Packaging continues, is that the company "has not received its operating permit because [IEPA] refuses to issue its permit." *Id*.

The Board observes that Packaging shut down press 4 at the Carol Stream facility and applied for and received a construction permit for the RTO. Packaging connected press 5 to the RTO and demonstrated to IEPA the VOM capture and destruction efficiency of the system. Packaging submitted information to IEPA concerning the water-based inks applied to presses 1 and 2. Packaging applied for a CAAPP permit, but ultimately instead sought a FESOP, the application for which is pending an IEPA final determination. Packaging submitted Annual Emissions Reports and Seasonal Emissions Reports to IEPA. Packaging submitted an application to IEPA for inclusion in ERMS. While most of these measure were years late, the People concede that Packaging has taken meaningful steps to come into compliance. The Board weighs the Section 33(c)(v) factor in favor of Packaging.

Board Finding on Whether Civil Penalty and Cease and Desist Order Should Be Imposed. Packaging operated multiple flexographic printing presses in violation of VOM emission restrictions for at least seven years, threatening human health through diminished air quality in an area of severe nonattainment for the ozone NAAQS. Packaging also failed to comply with reporting, recordkeeping, permitting, and compliance demonstration requirements, thwarting IEPA's ability to effectively administer environmental laws. The interference with the protection of the people's health and welfare, coupled with compliance having been technically practicable and economically reasonable, greatly outweigh Packaging's social and economic value and subsequent compliance efforts. The location of the Carol Stream plant is ultimately neither aggravating nor mitigating as the facility was located in an area of both industrial/commercial activity and severe ozone nonattainment. Based on the Section 33(c) factors, the Board finds that a civil penalty against Packaging is warranted.

To avoid potential confusion, the Board declines the People's request to issue "an order requiring Respondent to cease and desist from future violations of the Act and Board Regulations." Br. at 2. Initially, the Board notes that it has found that Packaging violated not only the Act and Board rules, but also IEPA rules and permit conditions. The language of the People's requested order, in the context of today's rulings, is therefore ambiguous. More importantly, the Board has found Packaging in violation for operating emission sources without an operating permit. Packaging still does not have an operating permit, but the company does have an operating permit (FESOP) application pending with IEPA. Under these circumstances, the People's requested cease and desist order could be misconstrued as an order requiring that the Carol Stream facility's operations immediately shut down. *See* People v. Panhandle Eastern Pipe Line Co., PCB 99-191, slip op. at 3-6 (Jan. 10, 2002) (granting motion to modify cease and desist order to allow time for final IEPA action on pending permit application). Of course, Packaging is and remains subject to all applicable laws, regulations, and permit conditions.

Amount of Civil Penalty

Section 42 of the Act (415 ILCS 5/42 (2010)) establishes the maximum civil penalties that the Board can impose on persons who have committed violations. Generally, under Section 42(a), the Board may impose up to a $50,000 civil penalty for each violation and an additional civil penalty of up to $10,000 for each day during which the violation continues. *See* 415 ILCS 5/42(a) (2010). Under Section 42(b)(5), the civil penalty for certain CAAPP violations cannot exceed $10,000 per day of violation. *See* 415 ILCS 5/42(b)(5) (2010).

Packaging committed numerous violations of the Act and regulations, as well as several permit conditions. Most of these violations took many years to resolve. For example, Packaging failed to comply with Section 218.401 of the Board's regulations (35 Ill. Adm. Code 218.401) by applying inks with VOM content in excess of 40% VOM by volume of the ink on press 4 from March 15, 1995 to December 2002. Packaging could be fined $50,000 for this violation of the Board's regulations. The violation continued for over seven and a half years. Accordingly, along with the $50,000 civil penalty, Packaging could be fined at least an additional $27,350,000 for the continuing violation (*i.e.*, $10,000 for each of roughly 2,735 days). Therefore, the Act's maximum penalty for this *one* violation is many millions of dollars. Of course, Packaging had other violations, many of which would yield similarly high maximum penalty amounts.

The People do not seek the statutory maximum penalty. Instead, the People ask the Board to impose a total civil penalty of $861,274 on Packaging. Br. at 41. This amount consists of $711,274 for the economic benefit to Packaging from noncompliance and $150,000 for non-economic penalty factors. Br. at 21, 23; Comp. Exh. 10 at 1, Att. C. The People do not request that Packaging be assessed the People's attorney fees and costs under Section 42(f) of the Act (415 ILCS 5/42(f) (2010)), but ask the Board to consider this "waiver in its assessment of an appropriate civil penalty." Br. at 41.

The Board considers the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)) to determine the appropriate amount of a civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount. Section 42(h) of the Act specifically provides:

> In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:
>
> (1) the duration and gravity of the violation;
>
> (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and

(7) whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such penalty may be offset in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and respondent. 415 ILCS 5/42(h) (2010).

In making their arguments, the parties refer to this version of Section 42(h), which is the current statutory language. Br. at 27; Resp. Br. at 35. Before the amended complaint was filed, Section 42(h) was amended by Public Act 93-575, effective January 1, 2004. Two changes to Section 42(h) are relevant for today's analysis. First, under Section 42(h)(3), when considering the economic benefits accrued by a respondent because of delay in compliance, the Board is to determine the economic benefits "by the lowest cost alternative for achieving compliance." 415 ILCS 5/42(h)(3) (2010). Second, in determining the appropriate civil penalty, the Board must ensure that the penalty is "at least as great as the economic benefits, if any accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship." 415 ILCS 5/42(h)(3) (2010).

The Board considers the Section 42(h) factors in turn.

Duration and Gravity of the Violations. The duration and gravity of Packaging's violations were significant. Although Packaging argues that only press 4 was noncompliant with the flexographic printing rule, press 5 was also noncompliant. Compliance was required with the

flexographic printing rule by March 15, 1995. Press 4 was in violation from 1995 until December 2002, and press 5 was in violation from 1995 until at least February 2004.

In addition, Packaging violated permitting requirements, some for over a decade. Packaging operated plastic bag extruders and flexographic printing presses from 7 to 13 years without applying for an operating permit. Packaging made a major modification in a severe ozone nonattainment area without a CAAPP permit and without demonstrating LAER or BACT. Packaging committed recordkeeping and reporting violations. Packing's claims of presses 1, 2, and 5 being in "substantive compliance" (Resp. Br. at 29) fail to recognize the discussed deficiencies of the tunnel dryer "informal emissions test" and the importance of timely *demonstrating* that all four presses complied with the flexographic printing rule. All of these violations kept critical information from IEPA and hindered that agency's essential functions.

The People correctly note that VOM emissions create the formation of ground-level ozone which can cause reduced lung functioning and inflammation of the linings of the lungs. Br. at 23-24, citing http://www.epa.gov/air/ozonepollution/health.htrnl. It is also true that "VOM is the greatest threat during the ozone formation season from May to September each year." Br. at 23. Packaging's emissions during these months in 2000 through 2003 ranged from 13.75 to 20.73 tons. Contrary to Packaging's suggestion (Resp. Br. at 29), that DuPage County was reclassified as "moderate" nonattainment and a former ozone standard was attained are of little aid to Packaging here. As the People argue, Packaging's violations resulted in actual excess VOM emissions, which could have been dramatically reduced by Packaging's timely compliance. Br. at 23. Press 4 had typical VOM emissions of 18.9 tons per year and was operated without any controls from 1992 to 2002. Press 5 had typical VOM emissions of 44.2 tons per year and began operation in 1995. It was late 2003 before press 5 was connected to the RTO, which was confirmed compliant only in 2004. Neither press 4 nor press 5 used compliant inks. Presses 1 and 2 could not bring Packaging into compliance with weighted averaging. March 15, 1995 was the compliance date for controlling VOM emissions through compliant inks, weighted averaging, or capture and control.

Packaging also asserts that any penalty imposed should be comparable to those assessed by the Board in several other enforcement actions brought by the People for alleged violations of the flexographic printing rule. Resp. Br. at 14, 19-22, 32-34, citing People v. Golden Bag, PCB 06-144 (Sept. 3, 2009) ($20,000 penalty settlement; 10 plastic extruders, 5 flexographic presses); People v. Aargus Plastics, PCB 04-9 (July 20, 2006) ($125,000 penalty settlement; 17 flexographic presses); People v. Bag Makers, PCB 05-192 (Jan. 5, 2006) ($62,700 penalty settlement; 15 flexographic presses). However, as each of these other proceedings involved the Board's acceptance of the parties' stipulation of facts and proposed settlement, the Board finds that they have little if any precedential value to a fully litigated case like this one.

The Board weighs the Section 42(h)(1) factor against Packaging.

Due Diligence. Packaging emphasizes that it did not become aware of the flexographic printing rule and other air pollution control provisions of the Act and regulations until IEPA inspected the Carol Stream facility in October 2001. Resp. Br. at 3-4. Nevertheless, the Board finds that Packaging's ignorance of the law demonstrates an absence of due diligence in

becoming aware of these environmental requirements that apply to its business. Packaging was required to submit its initial complete CAAPP application no later than September 7, 1995. Packaging submitted the application on July 2, 2002. By March 15, 1995, press 4 was required to use compliant ink or have a compliant capture device. Press 4 never had either and continued operating until 2002.

The Board recognizes that Packaging initiated compliance efforts promptly after the October 2001 IEPA inspection and before the company received a formal violation notice in January 2002. Packaging has also subsequently taken steps to achieve compliance. After IEPA's inspection, Packaging's environmental consultant informed Packaging that press 4 was in violation of the flexographic printing rule and that any ultimate reliance on the press 5 tunnel dryer would require a formal compliance demonstration. Nevertheless, Packaging continued to operate press 4 uncontrolled until December 2002. Packaging also continued to operate press 5, not connecting the press to the RTO until late 2003 and not performing a compliant capture and control test until February 2004, two years after receiving the violation notice. Packaging also exceeded VOM usage limits in its 2003 construction permit. Although Packaging eventually submitted emissions information, Packaging still failed to produce adequate records upon IEPA's 2004 re-inspections. Finally, Packaging never filed a petition for an adjusted standard or a variance in an effort to "secure relief" from its obligations. 415 ILCS 5/42(h)(2) (2010).[13]

The Board weighs the Section 42(h)(2) factor against Packaging.

Economic Benefits Accrued.

Lowest Cost Alternative. Under the Section 42(h)(3) factor, the Board considers "any economic benefits accrued by the respondent because of delay in compliance with requirements." 415 ILCS 5/42(h)(3) (2010). The Board's calculation of "the economic benefits shall be determined by the lowest cost alternative for achieving compliance." 415 ILCS 5/42(h)(3) (2010). For this factor, the People rely on Packaging's failure to use compliant inks or emissions control devices under the flexographic printing rule. The People do not present a calculation of any economic benefit to Packaging from the company's other violations. Reply Br. at 9.

Adjusted Standard or Moving Press 4. Packaging argues that any one of three scenarios should be used to calculate its economic benefit from noncompliance: obtaining an adjusted standard for $30,000 in legal and consulting fees (adjusted to $33,707 for the time value of money); moving press 4 to the company's Sparta, Michigan facility for $15,000 in moving expenses (adjusted to $16,853 for the time value of money); or purchasing a $75,000 refurbished RTO for press 4 (adjusted to $119,020 for the time value of money). Resp. Br. at 43-44; Resp. Exh. 55 at 6.

The Board rejects Packaging's scenario of obtaining an adjusted standard. As the People argue (Br. at 35-36), aside from the highly speculative assumption that Packaging would meet

[13] As the People assert (Reply Br. at 2), Packaging's references to unsuccessful settlement discussions with the People (Resp. Br. at 2, 33, 41) do not evidence efforts toward compliance with the requirements violated and are therefore irrelevant.

the burden of proof to be granted such relief, an adjusted standard is not a means of achieving compliance with the flexographic printing rule. An adjusted standard would apply in lieu of that rule. *See* 35 Ill. Adm. Code 101.202 (definition of "adjusted standard") ("The adjusted standard applies instead of the rule or regulation of general applicability.") Under Section 42(h)(3), the Board considers the lowest cost alternative of "achieving compliance" with the requirements violated. 415 ILCS 5/42(h)(3) (2010).

The Board also rejects Packaging's scenario of moving press 4 to Michigan. Packaging did not acquire the Michigan facility until 2002, some 7 years after the violations began. Such a move also fails to address press 5's noncompliance. In addition, moving press 4 to another state cannot bring the press into compliance with the flexographic printing rule. The Board discusses Packaging's suggested RTO option below.

Whether Only Press 4 Required an RTO. Two emission units, presses 4 and 5, used inks with VOM content in excess of 40% by volume of the ink. Weighted averaging was not viable for Packaging based on its customer-driven reliance on solvent-based inks. Press 4 never had emission controls. Packaging argues that press 5 was in "substantive compliance" based on the press' tunnel dryer, suggesting that press 5 never required an RTO to achieve compliance. The press 5 tunnel dryer system, however, was not established as providing compliant capture and control under the flexographic printing rule. The shortcomings of the informal emissions test conducted on the tunnel dryer were significant. The required test methods were not followed. Mr. Trzupek conducted a single half-hour test run rather than three one-hour test runs. VOM capture efficiency was not directly measured. IEPA was not informed of the test protocol in advance. IEPA was not given prior notice of the testing to allow an IEPA representative to witness the test. *See* 35 Ill. Adm. Code 215.105(c)-(f); *see also* Tr.1 at 45-46. Until the 2004 stack test on the RTO, there was no satisfactory compliance demonstration for press 5. Ultimately, Packaging did not rely upon the tunnel dryer for press 5's compliance, but instead purchased the RTO. As to whether one or both presses required an RTO, the Board finds that presses 4 and 5 required an RTO.

RTO Size Required for Compliance. The parties dispute the size of the RTO required for compliance. Both parties' economic experts relied upon the September 1999 "USEPA BEN User's Manual" (BEN Manual) in calculating the economic benefit from noncompliance. While the BEN Manual is not binding upon the Board, the Board has looked to this USEPA document for guidance.[14] The RTO purchased by Packaging in 2003 had capacity for three printing presses, but was connected to the only two presses then using solvent-based inks at the facility, presses 5 and 6. The People quote the BEN Manual for their use of the entire $250,000 RTO purchase price in calculating Packaging's economic benefit from noncompliance:

> The best evidence of what the violator should have done to prevent the violations is what it eventually did (or will do) to achieve compliance. This rule is instructive in those cases where the violator may appear to be installing a more expensive pollution control system than EPA staff believe is necessary to achieve compliance. In such situations, the proper cost inputs in the BEN model are

[14] The BEN Manual is part of Packaging's Exhibit 4A.

> usually still based on the actual (more expensive) system being installed. This is because the EPA should not second guess the business decisions of a violator. A violator often will have sound business reasons to install a more expensive compliance system (e.g., it may be more reliable, easier to maintain, or have a longer useful life). Br. at 37-38, quoting BEN Manual at 3-9.

The Board finds that Packaging's situation is more aptly described later on the same page of the BEN Manual: "if the violator is adding capacity to accommodate normal anticipated business growth, and on-time compliance would not have entailed such additional capacity, then you should exclude the incremental costs of the additional capacity." BEN Manual at 3-9. On-time compliance would have required an RTO with capacity for presses 4 and 5 only. The RTO purchased in 2003 was "large enough to accommodate a third press, should future expansion occur." Resp. Exh 55 at 7; *see also* Tr.1 at 208 (Mr. Joseph Imburgia testified that the RTO was sized to "expand the business" by accommodating "at least a third press"). In determining the lowest cost alternative to achieving compliance, the Board agrees with Packaging to "distinguish what is *required* for compliance, versus a pro-rata accommodation for future growth." Resp. Br. at 37 (emphasis in original).

Consistent with the BEN Manual, and as required by Section 42(h)(3) of the Act, the Board finds that installing an RTO with capacity to control VOM emissions from two presses was Packaging's lowest cost alternative to comply with the flexographic printing rule.

The Parties' Competing Economic Expert Opinions. Both the People's economic expert, Mr. Styzens, and Packaging's economic expert, Mr. McClure, calculated Packaging's economic benefit from delaying and avoiding RTO expenditures. Comp. Exh. 10; Resp. Exh. 4A, Scenario 2; Tr.1 at 107-09; Tr.2 at 128-29. "Delayed" costs give an unfair advantage to a violator (over competitors that paid to timely comply) because although the violator eventually funds compliance, the money not spent to timely comply was "available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance." BEN Manual at 1-2. "Avoided" costs similarly provide an unfair advantage to a violator because the violator never incurs RTO operation and maintenance costs during the period of noncompliance. *Id*.

Mr. Styzens calculated an economic benefit of $71,705 to Packaging from *delaying* the expenditure of funds to acquire an RTO. Mr. Styzens also estimated an economic benefit of $505,212 to Packaging from *avoiding* the recurring expenditure of funds to operate and maintain the RTO by not timely installing the equipment. Comp. Exh. 10 at 1, 3, Att. C; Tr.1 at 111-15, 118-22; Br. at 28-29, 31. These delayed and avoided compliance costs total $576,917. Mr. McClure calculated an economic benefit of $25,150 to Packaging from *delaying* the expenditure of funds to acquire an RTO. Mr. McClure also estimated an economic benefit of $93,870 to Packaging from *avoiding* the recurring expenditure of funds to operate and maintain the RTO by not timely installing the equipment. Resp. Exh. 4A, Scenario 2. Mr. McClure's two figures total $119,020.

Mr. Styzens used the actual $250,000 purchase price of Packaging's RTO in calculating delayed costs. To calculate avoided costs, he used $86,000 per year, a figure Mr. Bloomberg

provided based on estimated annual RTO operation and maintenance costs from the Formel AS 00-13 adjusted standard proceeding. Comp. Exh. 10 at 1, 3, Att. C; Tr.1 at 81-83, 110, 118-19, 122-24, 144-45, 155, 161; Tr. 2 at 56, 100-01. On the other hand, Mr. McClure used a $75,000 refurbished RTO in calculating delayed costs. Resp. Exh. 4 at 4. In calculating avoided costs, Mr. McClure used $16,362 as an estimated annual operation and maintenance cost. Resp. Exh. 4A, Scenario 2. Mr. McClure's cost inputs were provided by Mr. Trzupek, who consulted with Ship & Shore Environmental, Inc. Resp. Exhs. 43, 44; Resp. Exh. 4 at 4; Tr.2 at 50-51, 119-20, 125-26, 129, 149.

The $250,000 RTO used in Mr. Styzens' analysis could accommodate a gas flow rate of 15,000 standard cubic feet per minute or "scfm," large enough to handle three emission units (*i.e.*, presses 5 and 6 and another press in the future). Resp. Exh. 55 at 7. The $86,000 annual operation and maintenance costs which Mr. Styzens used were based upon the Formel RTO, sized at 25,000 scfm for four emission units (*i.e.*, three presses and a laminator). Tr.2 at 100-01; 35 Ill. Adm. Code 101.630 (25,000 scfm from Formel AS 00-13, Mar. 14, 2000 Petition, ASI Attach., Control Cost Exh. at 4, 14). The $75,000 and $16,362 figures used Mr. McClure assume an RTO sized at approximately 5,000 scfm, large enough only for press 4. Resp. Exh. 55 at 6; Tr.2 at 120, 129-30. As Packaging had two presses that required an RTO for compliance, presses 4 and 5, the Board finds that the People's economic expert based his analysis on an RTO that was larger than what was necessary to achieve compliance, while Packaging's expert based his analysis on an RTO that was too small to achieve compliance.

Mr. Styzen used one noncompliance period, from 1997 into December 2003 (*i.e.*, 7 years). Comp. Exh. 10 at 1, Att. C; Tr.1 at 106, 111. Mr. McClure also used a single noncompliance period, but his is not as long, extending from 1997 but ending at the end of 2002 (*i.e.*, 6 years). Resp. Exh. 4A, Scenario 2; Tr.2 at 120, 124, 135. The Board finds that both experts used noncompliance periods that are too short. To comply with the flexographic printing rule through an RTO, Packaging should have installed the control device by March 15, 1995. Press 4 was in violation from 1995 through the end of 2002 when it was shut down (*i.e.*, a full 7 years). Press 5 was in violation from some time in 1995 on or after March 15, 1995 until early 2004 when press 5's RTO was tested (*i.e.*, a full 8 years).

Board Calculation of Delayed and Avoided RTO Costs. The Board finds that while there is a divergence of over $450,000 in the respective economic benefit totals of the parties' experts, there is very little difference between their calculations when considered on a per-year and per-emission unit basis.

Using a noncompliance period of 1997 through 2003 (*i.e.*, 7 years) and the $250,000 spent on Packaging's RTO, Mr. Styzens calculated total delayed costs of $71,705, with inflation and other adjustments. Comp. Exh. 10 at 1, 3, Att.C. The $71,705 figure over 7 years equals approximately $10,244 per year for controlling three emission units, which is *about $3,415 in delayed costs per year on a per-unit basis*. Mr. McClure assumed a $75,000 refurbished RTO and a noncompliance period of 1997 through 2002 (*i.e.*, 6 years), and on that basis, calculated total delayed costs of $25,150, with adjustments for inflation and other factors. Resp. Exh. 4A, Scenario 2. The $25,150 figure over 6 years equals *approximately $4,192 in delayed costs per*

year on a per-unit basis. The respective experts' delayed cost-benefit results are therefore similar when compared on a per-year, per-emission unit basis.

Using the lower delayed cost estimate of $3,415 per year on a per-unit basis and the accurate noncompliance period of 7 years for press 4, the Board finds that Packaging's economic benefit from delaying compliance costs for press 4 is $23,905. Using the $3,415 figure and the accurate noncompliance period of 8 years for press 5, the Board finds that Packaging's economic benefit from delaying compliance costs for press 5 is $27,320. The Board accordingly determines that the economic benefit to Packaging from delaying compliance on presses 4 and 5 is $51,225.

Mr. Styzens arrived at avoided costs of $505,212, assuming $86,000 per year for operation and maintenance costs based on an RTO controlling four emission units, with adjustments for inflation and other factors. Comp. Exh. 10 at 3; Tr.1 at 81-83, 122-23, 155, 161; Tr. 2 at 100-01. The $505,212 figure over 7 years equals approximately $72,173 per year for controlling four emission units, which is *about $18,043 in avoided costs per year on a per-unit basis*. Mr. McClure's analysis arrived at costs of $93,870, assuming $16,362 per year for operating costs based on an RTO controlling only one press, with adjustments for inflation and other factors. Resp. Exh. 4A, Scenario 2. The $93,870 figure over 6 years equals *approximately $15,645 in avoided costs per year on a per-unit basis*. The respective experts' avoided cost-benefit results are therefore similar when compared on a per-year, per-emission unit basis.

Using the lower avoided cost estimate of $15,645 per year on a per-unit basis and the 7-year noncompliance period for press 4, the Board finds that Packaging's economic benefit from avoiding press 4 compliance costs was $109,515. Using the $15,645 figure and the 8-year noncompliance period for press 5, the Board finds that Packaging's economic benefit from avoiding press 5 compliance costs was $125,160. The Board therefore finds that the economic benefit to Packaging from avoiding compliance on presses 4 and 5 is $234,675

Combining Packaging's $51,225 delayed cost benefit with Packaging's $234,675 avoided cost benefit yields a total of $285,900 (*i.e.*, $133,420 in delayed and avoided costs for press 4, plus $152,480 in delayed and avoided costs for press 5).

Interest for Nonpayment of Economic Penalty. The People seek an additional $134,357 in interest for nonpayment (from December 5, 2003 through 2008) of the delayed and avoided costs portion of their proposed penalty. Comp. Exh. 10 at 3, Att. C; Tr.1 at 110, 117-18, 122, 125; Br. at 31. The concept of being penalized such interest, which Packaging does not dispute, is endorsed by USEPA in the BEN Manual. *See* BEN Manual at 3-7.[15] However, in the analysis above, the Board reduced the People's economic benefit calculation.

Because Packaging was not, in 2003-2004, disgorged of the delayed and avoided costs, the Board finds that the company has had the benefit of the considerable sum of $285,900 for several years. Mr. Styzens calculated the interest due for nonpayment of the economic benefit

[15] Mr. McClure's analysis did not include interest for penalty non-payment but he testified that "you can calculate interest any time[, i]t's a simple calculation." Tr.1 at 155-56.

penalty using the bank prime loan rate and a marginal income tax rate of 33% to arrive at compound interest after tax. Comp. Exh. 10 at 3, Att. C. Using these parameters, interest on the press 4 economic penalty of $133,420 from 2003 through 2008 would equal $35,270.73, while interest on the press 5 economic penalty of $152,480 from 2004 through 2008 would equal $35,142.84. The Board adds these interest figures to $285,900, resulting in a total economic benefit penalty of $356,313.57. *See* People v. Toyal, Inc., PCB 00-211, slip op. at 17-18, 58 (July 15, 2010) (Board accepted interest based on bank prime rate), *appeal pending sub nom.* Toyal America, Inc. f/k/a Alcan-Toyo America, Inc. v. Illinois Pollution Control Board and People of the State of Illinois *ex rel*. Lisa Madigan, Attorney General State of Illinois, No. 3-10-0585 (3rd Dist.).

Board Conclusion on Economic Benefit. The $356,313.57 figure reflects the economic benefit to Packaging from not having timely installed an RTO on presses 4 and 5 to comply with the flexographic printing rule. As noted, the People do not seek any economic benefit penalty for Packaging's failure to timely comply with the permitting, reporting, recordkeeping, and compliance demonstration requirements. No such economic benefit is quantified in the record and the Board declines to speculate what any such benefit might be. The Board finds that imposing a $356,313.57 economic benefit penalty recoups the entire economic benefit to Packaging established in this record. The Act provides that "the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship." 415 ILCS 5/42(h) (2010). The Board finds that no arbitrary or unreasonable financial hardship would result from imposing a penalty that strips Packaging of the economic benefit that the company realized by not timely complying. Packaging does not argue otherwise.

Penalty Amount Which Will Serve to Deter Future Violations and Enhance Voluntary Compliance. The People argue that the non-economic benefit portion of the penalty should be $150,000, making the total requested civil penalty $861,274. Br. at 23, 40. According to the People, a substantial penalty is necessary to deter future violations of the Act and would provide an incentive for similarly situated companies to become apprised of their environmental obligations. *Id.* at 39-40. The People maintain that "[t]he portion of the penalty reflecting gravity and duration should be a high priority, as the economic benefit component serves only to level the playing field." *Id*. at 40. According to the People, "a sizeable component for gravity and duration" will deter future violations by "ensur[ing] that the decision not to comply does not merely delay otherwise identical expenditures." *Id*.

Packaging acknowledges that deterrence of future violations is an important objective, but argues that a significant penalty for Packaging would not deter future violations or aid in compliance with the Act in light of "the actions taken by Packaging and the significant amounts it has expended thus far." Resp. Br. at 32.

In a recent Board decision involving the Chicago ozone nonattainment area, People v. Toyal, Inc., PCB 00-211 (July 15, 2010) (imposing $716,440 penalty), *appeal pending sub nom.* Toyal America, Inc. f/k/a Alcan-Toyo America, Inc. v. Illinois Pollution Control Board and People of the State of Illinois *ex rel*. Lisa Madigan, Attorney General State of Illinois, No. 3-10-

0585 (3rd Dist.) (Toyal, PCB 00-211), the People requested, and the Board imposed, a $400,000 non-economic benefit penalty on an aluminum products manufacturer for VOM RACT violations of similar duration (1995 to 2003). In Toyal, however, several significantly aggravating factors warranted this non-economic penalty.

First, the respondent in Toyal was aware by at least March 1996 that the company was in violation of the Part 218 RACT rule (also effective March 15, 1995) and nevertheless the company continued to operate for 7 years thereafter before coming into compliance. *See* Toyal, PCB 00-211, slip op. at 6, 10, 54, 56, 58. Packaging's period of knowing violation was much shorter. Tr.1 at 183-85, 186-87, 192, 199. Second, the Toyal respondent did not demonstrate compliance until three years after the People brought the enforcement action against the company. *See* Toyal, PCB 00-211, slip op. at 1, 10, 54. Packaging shut down press 4 before the People's initial complaint was filed, installed the RTO approximately 4 months after that complaint was filed, and demonstrated the RTO's compliance with the capture and control testing requirement of the flexographic printing rule about 6 months after that complaint's filing.

Finally, the respondent in Toyal was part of a large corporate structure with sales over $5 billion. *See* Toyal, PCB 00-211, slip op. at 5, 37, 54. "[T]o arrive at a penalty amount that will have a deterrent effect, the size of the violator is an appropriate consideration." People v. Panhandle Eastern Pipe Line Co., PCB 99-191, slip op. at 33 (Nov. 15, 2001). For example, in Panhandle, where the Board imposed a $350,000 non-economic penalty, the Board took into account that the respondent was "a large corporation," with "operations in many states, including five [facilities] in Illinois." *Id*. The Board also considered that the respondent "had considerable parent corporations behind it." *Id*. While Packaging competes nationally and acquired a second facility in Michigan, Mr. Dominic Imburgia, the founder and president of Packaging, testified that Packaging remains a small company with approximately 200 customers. Tr.1 at 182-83, 187-88. As of 2002, Packaging employed roughly 130 employees at its Carol Stream facility, though there were about 100 employees at this location as of 2009. Comp. Exh. 9 at 1.1-1; Tr.1 at 188.

Under these circumstances, and because Packaging initiated compliance measures upon being made aware of its violations and took steps to achieve compliance, the Board finds that a $100,000 non-economic penalty on Packaging is appropriate. The Board assesses this amount against Packaging, along with the $356,313.57 economic benefit penalty. A civil penalty of $456,313.57 will help to ensure that Packaging and similarly situated entities familiarize themselves with their environmental obligations.

The Number, Proximity in Time, and Gravity of Previously Adjudicated Violations of this Act by the Violator. Packaging has no previously adjudicated violations of the Act. The Board weighs this factor in favor of Packaging.

Voluntary Self-Disclosure of Noncompliance. Both parties acknowledge that Packaging did not voluntarily disclose its noncompliance. Br. at 40; Resp. Br. at 34. However, Packaging requests that this factor weigh neither against nor in favor of the company because Packaging took steps to comply and kept IEPA informed of those steps. Resp. Br. at 34-35. The Board has already considered the level of Packaging's due diligence. Section 42(h)(6) calls for

the Board to consider whether the violator voluntarily disclosed its noncompliance to IEPA as provided. Because Packaging did not do so, the Board weighs this factor against Packaging.

Supplemental Environmental Project. This factor does not apply to this case.

Board Finding on the Appropriate Civil Penalty. The Board imposes a $456,313.57 civil penalty on Packaging based upon the Section 42(h) factors of the Act (415 ILCS 5/42(h) (2010)). Specifically, the following factors support this substantial penalty: the many years of Packaging's numerous and grave violations in a severe ozone nonattainment area, resulting in actual excess VOM emissions to the environment and a hindrance to IEPA carrying out its duties; the company's lack of due diligence in making itself aware of its air pollution control obligations; the $356,313.57 economic benefit accrued by Packaging from noncompliance, which is the statutory minimum penalty amount; the need to deter future violations by Packaging and aid in voluntary compliance by Packaging and companies similarly situated; and Packaging's failure to self-disclose its violations. The civil penalty would be higher if Packaging had prior adjudicated violations of the Act or if the company had not initiated compliance measures once made aware of its violations and taken the steps necessary to come into compliance. Under Section 42(a) of the Act (415 ILCS 5/42(a) (2010)), the $456,313.57 penalty must be deposited in the Environmental Protection Trust Fund. The Board finds that the penalty amount ordered today will aid in enforcing the Act.

CONCLUSION

The Board finds that Packaging violated the Act, air pollution control regulations, and construction permit conditions. The number, nature, and duration of Packaging's violations, coupled with the statutory requirement to disgorge Packaging of its economic benefit from noncompliance, warrant a significant civil penalty. The Board therefore orders Packaging to pay a civil penalty of $456,313.57.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board finds that Packaging violated the following: the Environmental Protection Act at 415 ILCS 5/9(a), 9(b), 39.5(5)(a), and 39.5(6)(b) (2010); the Board's regulations at 35 Ill. Adm. Code 201.142, 201.143, 201.302(a), 203.201, 203.203(a), 203.301, 203.601, 205.300(a), 205.310(a)(1), 218.401(a), and 218.404(c); IEPA's regulations at 35 Ill. Adm. Code 254.137(a), 254.501, and 270.201(b); and Conditions 5, 15, and 16 of construction permit 03030016 issued on August 13, 2003.

2. Packaging must pay a civil penalty of $456,313.57 no later than October 24, 2011, which is the first business day following the 45th day after the date of this order. Packaging must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case

name, and Packaging's federal employer identification numbers must be included on the certified check or money order.

3. Packaging must send the certified check or money order to:

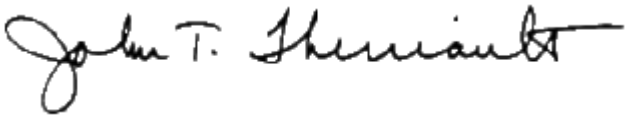
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 8, 2011, by a vote of 5-0.



John Therriault, Clerk
Illinois Pollution Control Board