

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB 04-16
(Enforcement - Air)

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OCT 19 2011

STATE OF ILLINOIS
Pollution Control Board

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STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Paula Wheeler
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

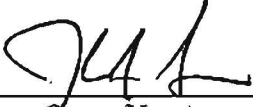
ORIGINAL

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on October 19, 2011, we filed the attached **RESPONDENT'S MOTION FOR RECONSIDERATION** via hand delivery with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

BY: 
One of Its Attorneys

Roy M. Harsch, Esq.
John A. Simon, Esq.
Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

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2 ORIGINAL

RESPONDENT'S MOTION FOR RECONSIDERATION

Respondent, Packaging Personified, Inc. ("Packaging"), by and through its attorneys, Drinker Biddle & Reath LLP, and pursuant to Section 101.902 of the Board Rules, moves for reconsideration of the September 8, 2011 Board Order imposing a \$456,313.57 civil penalty comprised of a \$356,313.57 economic benefit component and \$100,000 gravity component as follows:

1. The undisputed evidence at the hearing in this matter was that Respondent's expert consultant, Richard Trzupek, performed an engineering test of the capture and control efficiency of the re-circulating oven on press #5 on December 12, 2001, which demonstrated VOM capture efficiency of 82.6 percent, destruction efficiency of 93.6 percent, for overall VOM control of 77.3 percent. Tr. 2 at 18. The Board acknowledged this engineering test result on page 7 of the September 8, 2011 Order, but then disregarded this undisputed evidence when making its penalty determination.

2. In fact, Mr. Trzupek testified, based upon having performed several hundred formal stack tests, that the results of a formal stack test would not have varied from the engineering evaluation he performed in this case, except that a formal stack test would actually have reflected an even higher destruction efficiency. Tr. 2 at 21-22. No evidence was presented

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which might challenge the credibility of this evidence that press #5's re-circulating oven achieved a destructive efficiency over 90% and an overall control well in excess of the 60% required by the applicable Board regulation Rule 218.401. No evidence was presented regarding any Board Rule that rendered this engineering test unreliable. Mr. Trzupsek has used this engineering test in other cases for permitting purposes, which has been accepted by the Agency in other circumstances. *Id.* at 22. Indeed, the testimony was that Mr. Trzupsek discussed this engineering evaluation with IEPA in this case and that IEPA never questioned Mr. Trzupsek's engineering evaluation for press #5. *Id.* at 23.

3. The evidence that Packaging further reduced the VOM emissions from press #5 below the already compliant levels by connecting it to an RTO purchased and installed in connection with press #6, demonstrates Packaging's laudatory efforts to further reduce VOM emissions. Rather than encourage this additional voluntary reduction, the Board erroneously construed this act as evidence that press #5 lacked adequate VOM capture and control prior to February 2004.

4. Packaging has always maintained records of its ink usage and the VOM and HAP content associated with its operations vis-à-vis MSDS sheets and its daily production records. Tr. 1 at 195-198. Joseph Imburgia testified that Packaging tracks its output either in pounds, footage or bags on its production equipment. *Id.* at 196. That information is recorded on paper on the production floor at the time and then later input into the Access database. *Id.* Board Rule 218.105(2) allows for the use of "formulation data ... equivalent to Method 24 results in lieu of actual ink testing analysis." In practice, this means keeping MSDS sheets for the inks used on file. This, in fact, is how virtually all printers in this state comply with Rule 218.401(a). Mr. Trzupsek and Mr. Piper testified that the production records and the MSDS maintained by

Packaging included the relevant formulation data in satisfaction of this recordkeeping Rule for all presses and in satisfaction of the VOM content Rule for presses #1 and #2. Tr. 2 at 27; Tr. 1 at 242-246.

5. On August 3, 2003, the IEPA issued Packaging a construction permit with record keeping obligations regarding the inks used in presses #5 and #6. Packaging completed the construction authorized by that permit and passed a stack test in February 2004. On August 30, 2004, Packaging submitted a Federally Enforceable State Operating Permit ("FESOP") based in part on the results of this stack test. Resp. Ex. 34. The requested FESOP does not require Packaging to maintaining records regarding the inks used on presses #5 and #6 as they rely on the results demonstrated by this stack test of the pollution control equipment for VOM emission control. Had the IEPA timely issued Packaging its requested FESOP, Packaging would be operating under this FESOP rather than its construction permit. These ongoing recordkeeping obligations for inks used in presses #5 and #6 which the Board finds Packaging to be violating are solely the result of the IEPA's excessive delay in issuing the FESOP to Packaging which continues through today.

6. The lowest cost alternative of achieving compliance with the requirements violated was to shut down press #4, transfer the production from press #4 to press #5 and demonstrate that press #5 complied with VOM emission requirements through a formal stack test. Press #5 was capable of assuming all the production from press #4, as was demonstrated after 2002 when this was done. Tr. 1 at pp. 204-206. The unrefuted evidence was that press #5 would have passed a stack test if Packaging would have incurred an additional \$15-\$30,000 cost of constructing total temporary enclosure for press #5 and performed a \$6,180 stack test. Tr. 2 at 18-22.

7. The shift in production from press #4 to press #5 and shutting down press #4 involved no cost. To the contrary, Joseph Imburgia testified that Packaging enjoyed a cost savings as a result of shifting the press #4 production to press #5 and changing shifts. Tr. 1 at pp. 205-206. Mr. Trzupsek testified that the cost of demonstrating that press #5's re-circulating oven complied with the VOM capture and control requirements of Rule 218.401 was in the range of \$15,000 to \$30,000 dollars. Tr. 2 at p. 102. Using the \$30,000 upper end of this \$15-\$30,000 cost range for the TTE testified to by Mr. Trzupsek at December 2001 dollars. Additionally, Packaging would have incurred the \$6,180 cost of the stack test earlier in time. This results in a total economic benefit to Packaging of \$12,077. Supplemental Report of Christopher McClure, CPA, attached hereto as Exhibit A.

8. The evidence in the record establishes that the \$250,000 RTO was incurred in connection with the new and fully compliant press #6 and that it provided capacity for future expansion as well. It was error for the Board to attribute any portion of any RTO cost toward compliance of press #4. Packaging shut down press #4 and shifted production to press #5 at no cost. Tr. 1 at pp. 205-206. It was also error for the Board to attribute any RTO cost to press #5 as press #5 already had a fully compliant control from its initial construction due to its re-circulating oven. Tr. 2 at pp. 18-23. The only avoided or deferred cost by Packaging was the deferred \$15-\$30,000 cost of construction of a temporary total enclosure and \$6,180 for the formal stack test of press #5.

9. This lowest cost alternative: shutting down press #4; transferring production to press #5; and demonstrating press #5 compliance with a stack test, did not require an RTO or other additional pollution control device. This lowest cost alternative involved no avoided or delayed operating or maintenance costs for any such unnecessary RTO. Only the \$12,077

benefit from the deferred cost of this lowest cost alternative for compliance should be accepted by the Board as the economic benefit component of the penalty assessed against Packaging in this matter. Section 42(h)(3).

10. When all has been said and rehashed, these are the uncontroverted facts regarding the environmental impact of the four existing presses at Packaging: Presses #1 and #2 have always used water based inks with less than 40 percent VOM content. These presses operated sparingly and only one has operated beyond 2003. Press #4, on which non-complying inks were used, was uncontrolled and was shut down in December of 2002. Press #5, on which non-complying inks were used, has always been equipped with a re-circulating oven that Mr. Trzupsek testified met the substantive control requirement of the Board based upon his experience and based upon his engineering stack testing. There is no evidence in the record to refute his testimony. He further testified that IEPA accepted the resulting calculations of the emissions from press #5 for purposes of permitting the new press. The issues and allegations concerning recordkeeping and failure to conduct a formal stack test does not change these basic tenants. It is true that Packaging never performed a formal stack test on press #5 and thus did not formally prove that it was in compliance. While this is uncontroverted, it is not fair nor is it supported by the record to assess an economic benefit penalty for failure to install a separate control device on press #5. The correct assessment for the failure to conduct the formal stack test would be to utilize the cost of such a stack test in assessing any economic penalty. Packaging did not enjoy any economic advantage by failing to install a separate control system on press #5. Packaging testified that it decided to proceed to include press #5 along with the new press for purposes of control in hopes that IEPA would find that to be something that would lead them to be reasonable. Finally, no economic penalty is properly assessed for press #4 because Packaging, in

fact, saved money by shutting it down and transferring the production to press #5 and thereby not operating it. The Board has assessed a civil penalty for Packaging's failure to demonstrate compliance with the rules for both press #5 and press #4. The manner by which the economic penalty was derived by the Board should be reconsidered and determined consistent with this request.

WHEREFORE, for all the foregoing reasons, Packaging respectfully requests that the Board grant this Motion, reconsider its September 8, 2011 Order and reduce the economic benefit component of the penalty to \$12,077 as established by the attached supplemental report of Mr. McClure and further reduce the gravity component of the penalty.

PACKAGING PERSONIFIED, INC.

BY: 
One of Its Attorneys

Roy M. Harsch
John A. Simon
Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

CH01/25831156.1

Christopher T. McClure CPA, CFE
29 Dover Ave
La Grange IL 60525

October 19, 2011

John A. Simon
Drinker Biddle & Reath LLP
191 N. Wacker Dr. Suite 3700
Chicago IL 60606-1698

Re: PEOPLE OF THE STATE OF ILLINOIS V. PACKAGING PERSONIFIED, INC. PCB 04-16

Dear John:

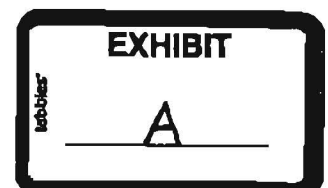
Pursuant to your request, I have enclosed a supplemental calculation of the economic benefit of \$12,077 enjoyed by Packaging Personified under the following assumptions you provided based upon the testimony of the witnesses at the June 29-30, 2009 hearing:

1. There was no cost to Packaging as a result of shutting down press 4 and shifting production to press 5 in December 2002.
2. The cost of constructing a total temporary enclosure around press 5 in order to perform a stack test along the lines of what is frequently required by IEPA construction permits would have been \$15-\$30,000 in December 2001 dollars. I have used the \$30,000 top of the range for a conservative calculation.
3. That the relevant regulation became effective on March 15, 1995--and thus the date of noncompliance-- and that actual demonstration of compliance to IEPA for press 5 was February 2004 at which time ARI performed a formal stack test at a cost of \$6,180.¹
4. That the penalty amount should be calculated through October 2011.
5. That the economic benefit calculation be prepared in accordance with the US EPA guidance on calculating economic benefit and the Illinois Statute's lowest cost alternative requirement.

In addition to your assumptions, I have assumed that the total cost of compliance of \$36,180 is an expense and not a capital asset, therefore no depreciation expense is included.

This calculation is limited to analyzing the potential economic benefit penalty component only to possibly be imposed by the Board pursuant to Section 42 (h)(3) of the Illinois Environmental Protection Act and does not address any potential gravity component.

¹ ARI invoice attached to this letter



John A. Simon
October 19, 2011
Page 2

This analysis is based on currently available documents and information and is subject to change based on the review of additional information that may be provided. I reserve the right to revise this report.

Very truly yours,



Christopher T. McClure

Packaging Personified, Inc.
Economic Benefit Calculation

Scenario Description

Delay of cost of constructing a total temporary enclosure around press 5

| Month-Year | Period | A Capital Expenditures | B Delayed Costs | C Lost Annual Benefits | D Depreciation | E Total Annual Costs/(Benefits) | F Tax Adjustment @ 37.0% | G After-Tax Annual Costs/(Benefits) | H Actual Spending | I Cumulative Deferred Spending | J Applicable Interest Rate | K Time Value of Deferred Spending |
|------------|--------|---------------------------|--------------------|---------------------------|-------------------|------------------------------------|-----------------------------|--|----------------------|-----------------------------------|-------------------------------|--------------------------------------|
| 15-Mar-95 | 1 | 0 | 34,904 | 0 | 0 | 34,904 | (12,915) | 21,989 | 0 | 21,989 | 5.94% | \$1,034 |
| 1996 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23,023 | 5.52% | \$1,271 |
| 1997 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24,294 | 5.63% | \$1,368 |
| 1998 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25,662 | 5.05% | \$1,296 |
| 1999 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26,958 | 5.08% | \$1,369 |
| 2000 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 28,328 | 6.11% | \$1,731 |
| 2001 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30,058 | 3.49% | \$1,049 |
| 2002 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31,107 | 2.00% | \$622 |
| 2003 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31,730 | 1.24% | \$393 |
| 2004 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 36,180 | 1.89% | \$192 | |
| 2005 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10,325 | 3.62% | \$374 |
| 2006 | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10,699 | 4.94% | \$529 |
| 2007 | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11,227 | 4.53% | \$509 |
| 2008 | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11,736 | 1.83% | \$215 |
| 2009 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11,951 | 0.47% | \$56 |
| 2010 | 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12,007 | 0.32% | \$38 |
| 2011 | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12,045 | 0.32% | \$32 |
| | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 36,180 | | | 12,077 |

Total Avoided Operation Costs/(Benefits) \$0 L

Total Economic Benefit / (Detriment) \$12,077 M

KEY

- A The estimated capital expenditures deflated to 1995.
- B Costs delayed by postponing compliance (2001 estimated costs deflated to 1995 dollars)
- C Estimate of the monthly lost benefit not realized by delaying compliance
- D Depreciation that would have been taken on amount in column A
- E Sum of B+C+D
- F Tax impact of item E
- G E+F

- H Actual dollars spent
- I I = Previous (I + K) + Current (A + C - F)
- J Risk-free T-Bill rate to inflate dollars to the date of compliance
- K Amount earned on the cumulative deferred spending
- L Sum of columns B+C, represents the total avoided cost or (benefit) from the delay
- M Total economic benefit (delayed + avoided)



ARI ENVIRONMENTAL, INC.

951 OLD RAND RD. #108
 WAUCONDA, IL 60084
 PHONE # 847-487-1580

65101

TO:
 PACKAGING PERSONIFIED, INC.
 ATTN: ACCT PAYABLE
 246 KEHOE BLVD
 CAROL STREAM, IL 60188

| | |
|-------------------------------------|----------------------------|
| SALESPERSON | DATE OF INVOICE 4/29/04 |
| SHIP TO ATTN: MATTHEW WHALIN | |

| ACCOUNT NO. | DATE SHIPPED | SHIPPED VIA | COUP. | F.O.B. POINT | TERMS | YOUR ORDER NUMBER | |
|-------------|---|-------------|-------|--------------|--------|-------------------|---------|
| | | | | | NET 30 | 2002 | |
| QUANTITY | DESCRIPTION | | | | | UNIT PRICE | AMOUNT |
| 1 | FOR SERVICES RENDERED IN CONNECTION WITH CONDUCTING THE VOC EMISSION TEST PROGRAM ON THE REGENERATIVE THERMAL OXIDIZER DESTRUCTION EFFICIENCY AT THE PACKAGING PERSONIFIED FACILITY 2/26/04 ARI PROJECT # 425-01 MAY 1 2004 | | | | | 6180.00 | 6180.00 |
| | | | | | | TOTAL | 6180.00 |

PAID
 JUN 0 6 2004
 BY: 41135

Thank You

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OCT 19 2011

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **RESPONDENT'S MOTION FOR RECONSIDERATION** was filed via hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties below by U.S. First Class Mail and Electronic Mail on October 19, 2011:

Paula Wheeler
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Christopher J. Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

2 ORIGINAL



John A. Simon

CH01/25831211.1

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