

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

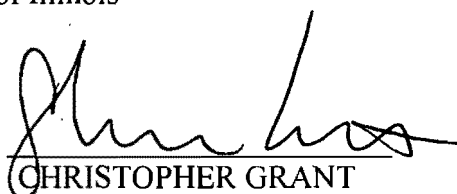
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB 04-16
)	
PACKAGING PERSONIFIED, INC.,)	(Enforcement)
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on February 11, 2013, Complainant filed its Forth Request to Extend Record Deadline with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A copy of Complainant's Motion is attached hereto.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

BY:



CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

FOURTH REQUEST TO EXTEND RECORD DEADLINE

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and respectfully requests that the Illinois Pollution Control Board (“Board”) extend the deadline for completion of the record in this matter. In support of this Motion, Complainant states as follows:

I. BACKGROUND

On September 8, 2011, the Board entered an order finding Packaging Personified, Inc. (“PPI”) in violation of the Flexographic Printing Rules, and assessed a civil penalty of \$456,313.57. However, on March 1, 2012, the Board granted PPI’s Motion for Reconsideration, and directed the matter for hearing on two issues raised by Respondent related to the “lowest cost alternative for achieving compliance”, as that term is used in 415 ILCS 5/42(h)(3) (2010). Over Complainant’s objection, the Board directed hearing on the economic impact of hypothetically operating only one of the two printing presses at the Site. The record shows that for the year 2003 only Press No. 5 operated, and Respondent claims it ‘could have’ run its business with only Press No. 5 for the entire period of noncompliance, i.e. March 15, 1995 through February 1, 2004.

Respondent claims that it has no production records for the period 1995 through 2003, and therefore cannot produce the information requested in discovery. However, PPI does have complete tax returns for the period of violation. On June 28, 2012, Petitioner sought the tax returns in discovery. Following PPI's refusal to produce the returns, Complainant moved to compel production. On November 15, 2012, Hearing Officer Bradley P. Halloran directed that they be produced, with all schedules and attachments. However, as of the date of filing this Motion, Respondent has failed to produce the returns¹.

II. THE INFORMATION CONTAINED IN THE TAX RETURNS IS NECESSARY FOR A FAIR EVALUATION OF RESPONDENT'S CLAIMS

Complainant is entitled to discovery of relevant, non-privileged information. The information contained in the complete tax returns is important to determining the financial impact of PPI's novel theory of 'hypothetical non-operation'. For example, if PPI's revenue, profit, or costs for labor differ significantly during 2003 from the average of the other years of noncompliance, the information will be of great use to the Board. Only Press No. 5 operated in 2003, compared to 1995-2002 when both presses operated. Did PPI have to give up business during 2003 because of lack of capacity?

The relevance of this information, especially in light of the claimed absence of other records, is obvious. If the present date for close of the record is not extended, Complainant's case will be seriously prejudiced².

¹ On January 29, 2013, counsel for Respondent suggested that the returns might be made available for examining at their offices, subject to approval from his client. However Complainant has received no assurance that his client has agreed to produce them, and no date has been set for reviewing the tax returns.

² Because the tax returns are the only financial information available, Complainant is entitled to, and will need this information before taking the corporate representative deposition of PPI. But for PPI's delays, all depositions in this case could have been completed months ago.

III. THE DATE FOR CLOSE OF THE RECORD MUST BE CONTINUED SO THAT COMPLAINANT CAN OBTAIN DISCOVERY TO WHICH IT IS ENTITLED

This Motion is Complainant's fourth request for an extension. While Complainant understands the Board's impatience regarding completion of the record, Complainant's fourth request for an extension has been made necessary only because of Respondent's failure to respond to discovery requests made more than *seven months ago*. In effect, Respondent is delaying the hearing that Respondent requested.

The current date for close of the record is April 5, 2013. Pursuant to 35 Ill. Adm. Code 101.602, the Clerk must provide notice of hearing at least thirty days prior to the hearing date. Therefore, even if a notice of hearing was issued as of the date of filing this motion, hearing could take place no earlier than March 14, 2013³. Preparation of a hearing transcript generally takes an additional 10 days, leaving only 11 days to complete post-hearing briefs.

While Complainant is willing to follow an expedited schedule to complete hearing on these issues, it should not be compelled to do so without the information contained in the tax returns. Eighty-eight (88) days have passed since their production was ordered by the Hearing Officer, but they have not yet been made available.

The Board has authority to impose sanctions for violations of Hearing Officer orders pursuant to Section 101.800 of the Board Procedural Rules, 35 Ill. Adm. Code 101.800, including dismissal of this Action. However, the Board generally views dismissal for discovery violations as a 'last resort'. *Morton F. Dorothy v. Flex-N-Gate Corporation*, PCB 05-49 (November 2, 2006, slip op. at 9). Complainant therefore does not request judgment by default or dismissal at this time. Instead, Complaint requests that the Board order Respondent to

³ This date does not take into account possible conflicts in the Hearing Officer's schedule, or the need to verify availability of a location for hearing.

produce the tax return information within seven (7) days of the date of the Board's Order, direct Respondent to produce witnesses for completion of depositions within thirty (30) days of production of the tax return information, and direct that hearing be held within sixty (60) days of the date of production of the tax returns. Complainant also requests that the close of record be set for no later than thirty (30) days after hearing.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board continue the deadline for the close of record in accordance with this Motion, and enter such other relief as the Board deems appropriate.

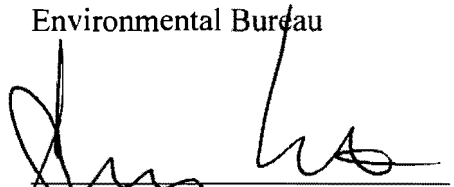
RESPECTFULLY SUBMITTED

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ELIZABETH WALLACE, Chief
Environmental Bureau

BY:


CHRISTOPHER GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, Illinois 60602
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Respondent.)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 11th day of February, 2013, the foregoing Fourth Request to Extend Record Deadline, and Notice of Filing, upon the persons listed below, by electronic transmission and by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:

Mr. Roy Harsch
Mr. John Simon
Drinker Biddle Reath
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, 11th Floor
Chicago, Il 60601 (By Hand Delivery)

Mr. John Therriault
Clerk, Illinois Pollution Control Board
(by electronic filing)