

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 May 3, 2013, Complainant filed its Motion in Limine to Admit Publication of Richard Trzupek, by electronic filing. A copy of the document so filed is attached hereto.

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

BY:



CHRISTOPHER GRANT
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Chicago, Illinois 60602
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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.)	

MOTION IN LIMINE TO ADMIT PUBLICATION OF RICHARD TRZUPEK

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and moves the Hearing Officer to admit published material authored by Richard Trzupsek as evidence, for the purpose of impeaching Mr. Trzupsek's credibility as a testifying expert witnesses in this case. In support thereof, Complainant states as follows:

1. Richard Trzupsek has been named as an opinion witness for Respondent Packaging Personified, Inc. ("Packaging"), and will provide an opinion on a matter central to this hearing: whether an 'informal stack test' performed on Press No. 5 in 2002 sufficiently demonstrated compliance with the volatile organic compound ("VOC") capture and control requirements contained in 35 Ill. Adm. Code, Part 218. This question is one of the three topics on which the Board has directed this second hearing.

2. Neither Respondent nor Mr. Trzupsek notified Illinois EPA prior to the 2002 test, and therefore the Agency did not have the opportunity to verify Mr. Trzupsek's test methods. In addition, following this 'informal stack test', Packaging modified Press No. 5 by connecting it to a Thermal Oxidizer. Only after this modification was Illinois EPA notified and allowed to

witness a 'formal' stack test, which was not performed on Press No. 5, but rather on the oxidizer itself.

3. According to Packaging's general manager, Press No. 5 was shut down approximately 18 months ago, and is no longer operating. Therefore, no test can now be performed on an 'operating' press. Accordingly, all of Packaging's evidence regarding the VOC control capabilities of Press No. 5 must come from Mr. Trzupsek.

4. Mr. Trzupsek also testified at the 2009 hearing in this case. In 2011, Mr. Trzupsek authored and published a book highly critical of Illinois EPA and the State's environmental regulatory scheme, titled Regulators Gone Wild: How the EPA is Ruining American Industry¹.

5. Mr. Trzupsek dedicated an entire chapter of his book to the Packaging Personified enforcement case. In this chapter he identifies Respondent and its owners by name, describes Packaging's business, the violations alleged by the State, and the enforcement case now pending.

6. Mr. Trzupsek's book contains a number of inflammatory statements and conclusions that demonstrate a clear bias against Illinois EPA, and environmental regulation in general. For example, Mr. Trzupsek alleges that the motivation for Illinois EPA's calculated civil penalty *against Packaging* was tied directly to disgraced former Governor Rod Blagojevich². In addition, Mr. Trzupsek downplays the importance of the VOC control regulations themselves, and asserts that the regulatory agencies are destroying businesses³. Mr. Trzupsek's comments

¹ Encounter Books, copyright 2011. The book is available for purchase on Amazon.com.

² "Whatever discretion the Illinois EPA might have otherwise exercised was eliminated by the Illinois administration and its seemingly insatiable need for cash. Governor Rod Blagojevich was running up billions in debt....with the governor desperate for every dollar he could get, evenhanded negotiation was no longer an option." P. 44

³ (Again referring to the Packaging case) "This kind of regulatory intransigence and bureaucratic bungling is the pattern time and time again, in state after state across the nation. The effects on the business climate and the economy have not, to my knowledge, been calculated, but in my mind there is no doubt that this toxic environment poisons business decisions every day". P. 47

demonstrate a clear bias against the existing regulations, and against Illinois EPA's enforcement actions in *this case*.

7. In addition, Mr. Trzupsek's comments demonstrate a clear bias in favor of Packaging and its owners. In his acknowledgement section, Mr. Trzupsek thanks the owners of Packaging by name, and states that "*My job has been to keep the EPA off of their backs so they could continue to do that important work, and it has been an honor to help them.*"⁴

8. Matters that may reasonably be expected to color the testimony of witness are proper subjects of inquiry of any witness⁵. This includes opinion or expert witness, who may be questioned on impeaching matter, including the sincerity of his or her opinion⁶. In fact, Courts have held that failure to allow cross examination related to prior statements for the purpose of bias constitutes reversible error. As one court stated, "*...counsel must be given the widest possible latitude during cross-examination to demonstrate any interest, bias, or motive of the expert witness to testify*"⁷.

9. Because Mr. Trzupsek testified at the first hearing, Complainant will not now seek to exclude his testimony. But Complainant must be allowed to examine Mr. Trzupsek's unique opinions through cross-examination on the statements contained in his book. Because the inquiry does not seek to assert the truth of the matter asserted but rather to demonstrate bias, there is no hearsay issue involved. Because his opinions go to the specific case before the Board, there can be no objection as to the relevance of this examination.

⁴ P.150

⁵ Michael H. Graham, *Cleary & Graham's Handbook of Illinois Evidence*, Section 607.7 (9th ed. 2009)

⁶ *Id.*, Section 705.2

⁷ *Sanchez v. Black Brothers Co.*, 98 Ill. App. 3d 264, 271 (1st Dist. 1981)

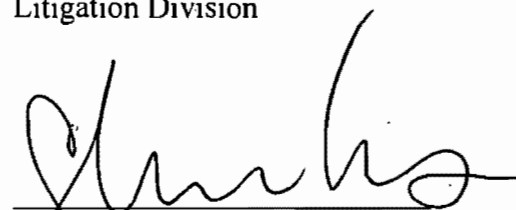
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Hearing Officer grant its Motion *in Limine*, and allow use of the statements contained in the book Regulators Gone Wild: How the EPA is Ruining American Industry to impeach Mr. Trzupsek, and as evidence of bias in this matter.

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

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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 3d day of May, 2013, the foregoing Motion in Limine to Admit Publication of Richard Trzupsek, 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

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(by electronic filing)