

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 13, 2013, Complainant filed its Pre-Hearing Memorandum. 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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)	(Enforcement - Air)
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Illinois corporation,)	
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COMPLAINANT'S PRE-HEARING MEMORANDUM

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and submits its pre-hearing memorandum, as directed by the Hearing Officer.

OVERVIEW:

The hearing scheduled for May 21, 2013 was ordered by the Board on March 1, 2012.

As directed by the Board, the issues for hearing are as follows:

1. Did the press 5 tunnel dryer system¹⁴ constitute a "capture system and control device" under 35 Ill. Adm. Code 218.401(c)?
2. Would press 5 and the tunnel dryer system have accommodated the entire production of both press 4 and press 5 from March 15, 1995 to February 26, 2004? What costs, if any, did Packaging avoid or delay by not shifting press 4's production to press 5 until after press 4 ceased operating in December 2002?
3. Would a formal stack test of the press 5 tunnel dryer system have demonstrated compliance with the capture and control requirements of 35 Ill. Adm. Code 218.401(c)? What costs, if any, did Packaging avoid or delay by not building a TTE for press 5 and performing a formal stack test of the tunnel dryer system?
4. Interest due for nonpayment of the economic benefit component of the penalty.

PCB 04-61, March 1, 2012, at P. 17

The Board reopened penalty arguments, and stated that the Parties could consider and reargue any of the Board's Penalty factors. The Parties may use exhibits already in evidence from the first hearing, and may introduce new evidence. *PCB 04-61, March 1, 2012, at P. 18.*

EXHIBITS:

Complainant may use any of the Exhibits entered into evidence at the 2009 hearing. In addition, Complainant will introduce the report of Kevin Mattison along with his testimony. This exhibit will not include any material not previously disclosed to Respondents, and is taken directly from Complainant's expert witness disclosure. The disclosure was served on Respondent as a supplemental response to Interrogatories on November 15, 2012. The July 15, 2009 Hearing Report indicates that Complainant's last Exhibit was numbered Exhibit 14. Therefore, Complainant will propose Mr. Mattison's report as *Complainant's Exhibit 15*. A copy of the proposed Exhibit is attached hereto.

Additionally, Complainant may introduce excerpts from "Regulators gone Wild", Mr. Trzupsek's 2012 book, for the purpose of demonstrating bias.

WITNESSES:

Complainant may call any of the witnesses named by Respondent. This includes Dominick Imburgia, Joseph Imburgia, Chris McClure, and Richard Trzupsek. Complainant suggests that the Parties agree to a broad 'scope of examination' so that all testimony may be heard during Complainant's cross-examination. In its case, Complainant will call Kevin Mattison, an employee of Illinois EPA. Complainant reserves the right to call rebuttal witnesses as may become necessary, but as of the date of this Memorandum, Complainant does not expect to call anyone besides Mr. Mattison.

POST-HEARING

The date for close of record is July 3, 2013. Complainant believes that simultaneous Post-Hearing and simultaneous Response Brief dates should be established to complete briefing no later than July 3, 2013.

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:



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COMPLAINANT'S EXHIBIT 15

Respondent's estimate of the capture and control efficiency of Press No.5 cannot be reasonably relied upon because of the following:

- a. Mr. Trzupsek used a liquid to gas mass balance without an enclosure to determine capture efficiency. Mr. Trzupsek's method does not comply with USEPA guidance document 035. Respondent's method lacks statistical analysis, cannot be verified, and is unreliable.

- b. Mr. Trzupsek applied an incorrect input value of 40 lbs/hr of VOM in making his calculations, which in reality represented the ink usage rate. In order to accurately determine the VOM input value, Mr. Trzupsek would have needed to accurately measure the amount of ink used during the test, sample the ink and have it analyzed as applied. No information was tendered indicating this was done. The control efficiency estimates offered are therefore invalid. Also, based on the printing ink VOM content information provided by Respondent, Mr. Trzupsek's reported data would calculate a capture efficiency estimate of between 107% and 127%, results which are impossible and clearly erroneous.

- c. Mr. Trzupsek based his capture efficiency estimate on incorrect inputs, which grossly misrepresented the efficiency. Specifically his ink VOM input is reported as VOM, whereas the measured inlet concentration is measured as propane. Use of different parameters makes it impossible to make an accurate assessment. USEPA's test

protocols, which require that the numbers of the same origin be used, would need to be followed to develop an accurate capture efficiency estimate.

- d. Mr. Trzupsek's reports indicate that his destruction efficiency calculations are incorrect and/or unreliable. Removal or destruction efficiency of a control system is based on lbs/hr of emissions in to lbs/hr of emissions out $DE = ((VOM_{in} - VOM_{out}) / VOM_{in}) * 100$. It is imperative that accurate flow measurements be obtained, since this information is used to calculate mass emissions (lbs/hr). There is no documentation showing that the inlet test location met USEPA Method 1 for proper and accurate measurement of flow. If the flow data is incorrect, so will the destruction efficiency calculations.

Also, Mr. Trzupsek's assertion that the oven was under negative pressure is inconsistent with reported flow information. The inlet flow data as reported is over 2.5 times higher than the outlet flow. However, in order for the oven to be under negative pressure the outlet flow would have to be more than the inlet flow. Either Mr. Trzupsek's statement that the oven was under negative pressure is incorrect, or the inlet flow data is wrong. If the oven was not being maintained under negative pressure, emissions would be pushed out of the oven and would not be accounted for in the control efficiency calculation, rendering the calculation false and unreliable. In addition, if, as appears, the inlet flow is wrong, Mr. Trzupsek is biasing the destruction efficiency calculations by inflating the inlet emissions rate to the control, and thereby overestimating the destruction efficiency of the oven.

- e. Mr. Trzupsek's statement that he and Respondent believed that measurement of capture efficiencies was time consuming and expensive and that neither he nor Packaging Personified finds the investment in time and cost justified. The purpose of the regulatory requirements are to ensure the data being obtained is accurate and correct. Ignoring the regulatory requirements indicates that obtaining accurate test results on control efficiency was not a priority.

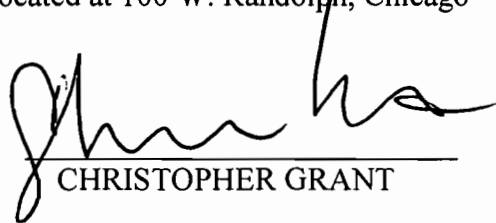
- f. In Mr. Trzupsek's Expert Report – 2009, Mr. Trzupsek makes a statement that the test program revealed that the VOM destruction efficiency within the drying oven exceeded 99%. However, the data from December 12, 2001, reports a destruction efficiency of 93.6%. Combined with the faulty calculations regarding of capture efficiency, these inconsistencies suggest that Mr. Trzupsek's capture and destruction efficiency calculations are overestimated and incorrect.

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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 13th day of May, 2013, the foregoing COMPLAINANT'S PRE-HEARING MEMORANDUM 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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