

RECEIVED  
CLERK'S OFFICE

JUN - 3 2013

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

June 3, 2013

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



ORIGINAL

**HEARING REPORT FOR SUPPLEMENTAL HEARING**

On June 7, 2012, the Board directed additional proceedings in this enforcement action concerning "economic benefit" as it relates to the penalty issues in the case. See People v. Packaging Personified, Inc., PCB 04-16 (June 7, 2012).

On May 21, 2013, a supplemental hearing in this matter was held at the City Hall, Council Room, 209 North York Street, Elmhurst, Illinois. Assistant Attorneys General Nichole Sangha and Christopher J. Grant appeared and participated on behalf of the complainant. Attorney Roy M. Harsch appeared and participated on behalf of respondent, Packaging Personified, Inc. (PPI).

**Preliminary Matters**

At the hearing, various pre-filed written motions were discussed. On May 6, 2013, the respondent filed a motion *in limine* to mark tax documents as trade secret or non-disclosable information. That motion was granted subject to the Board's ruling, if any. Also, on May 6, 2013, respondent filed a motion-*in- limine* to admit additional publications of Richard Trzupek. At hearing, respondent supplemented the motion *in limine* with attached oral and written testimony of Richard Trzupek's testimony before the House Committee on Science, Space & Technology-Environmental Subcommittee. That motion was granted without objection and marked as Respondent's Exhibit 66.

The complainant filed a motion *in limine* to admit publication of Richard Trzupek, on May 3, 2013. At hearing, complainant supplemented its motion with certain pages of the book written by Richard Trzupek, entitled Regulators Gone Wild: How the EPA is Ruining American Industry. That motion was granted without objection, and marked Complainant's Exhibit 18.

Respondent offered at the hearing Respondent's Exhibit 63, which comprises of the first two pages of PPI's tax returns for the years of 2002 and 2003. The respondent submitted one redacted and one un-redacted copy of each. Respondent's motion to mark them confidential as trade secret and/or non-disclosable was granted subject to the Board's ruling, if any. Respondent's Exhibit 63 was taken with the case as an offer of proof.

Finally, a portion of witness Joseph Imburgia's testimony addressing PPI's tax returns was held confidential and was transcribed on a separate transcript and marked "Confidential". The confidential testimony can be found at pages 89-134 of the transcript. Complainant's Exhibit 17 was testified to and is a stipulation of facts that includes tax information that was held to be trade secret and non-disclosable information subject to the Board's ruling and marked as such. Respondent's Exhibit 63 that included PPI's 2002 and 2003 tax returns that was taken with the case as an offer of proof was also testified to during this session. During the confidential portion of Mr. Imburgia's testimony, the hearing officer closed the door to the hearing room and posted a notice of the closed session along with a sign-up sheet for any members of the public that wished to make a public comment once to session was open. No members of the public signed up to give comment.

### **Exhibits**

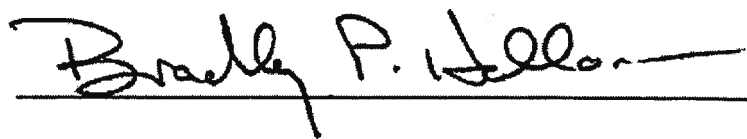
An exhibit list itemizing the offered exhibits and summarizing their status is attached to this order.

### **Briefing Schedule**

A briefing schedule for the supplemental hearing was discussed and agreed to at the hearing. The respondent's post-hearing brief is due to be filed on or before June 12, 2013. The complainant's post-hearing brief is due to be filed on or before June 24, 2013. The respondent's reply brief, if any, is due to be filed on or before July 3, 2013. As discussed at the supplemental hearing, the parties are to file one un-redacted and one redacted copy of the post-hearing briefs due to the confidential and un-disclosable nature of a portion of the evidence. The record closes on July 3, 2013. The mailbox rule does not apply to the parties' briefs and all electronic or approved telefax filings must be received by the Clerk's office no later than 4:30 p.m. of the due date.

Public comment is due to be filed on or before June 14, 2013.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917  
**Brad.Halloran@illinois.gov**

PCB 04-16  
May 21, 2013

**Exhibit List For Supplemental Hearing**

Exhibit	Description	Status
Hearing Officer Exhibit 2	Affidavit pursuant to Section 130.404( e) (4) of the Board's procedural rules-supplement to respondent's motion <i>in limine</i> to mark tax documents as trade secret or non-disclosable information, filed May 6, 2013.	Admitted
Complainant's Exhibit 6	Letter dated October 29, 2003 from Ship & Shore to Packaging Personified (From June 29 and 30, 2009 Hearing)	Admitted
Complainant's Exhibit 15	Report of Agency witness Kevin Mattison-Demonstrative Evidence	Admitted
Complainant's Exhibit 16	Machine Point advertisement	Admitted
Complainant's Exhibit 17	Stipulation of Facts regarding Packaging Personified Inc. Sales, Gross Profit and Total Income for the years 1994 to 2004-(redacted and un-redacted)	Admitted
Complainant's Exhibit 18	Nine pages from a book authored and published by Richard Trzupek's entitled <u>Regulators Gone Wild: How the EPA is Ruining American Industry</u>	Admitted
Complainant's Exhibit 19	Supplemental Expert Report from Trinity Consultants, dated August 9, 2012	Admitted
Complainant's Exhibit 20	Letter to John Simon from Christopher McClure, dated August 9, 2012	Not Offered
Complainant's Exhibit 21	Letter to Agency from Richard Trzupek, dated April 30, 2004	Admitted
Complainant's Exhibit 22	Letter to Agency from Richard Trzupek, dated May 1, 2003	Admitted
Respondent's Exhibit 59	VOC Reporting Chart, dated May 13, 2009	Admitted
Respondent's Exhibit 60	Monthly Accumulation Chart of both pounds and footage produced for the off-line presses from 2000 to current year	Admitted
Respondent's Exhibit 61	Anticipated average production outputs for Press 4 and 5	Admitted
Respondent's Exhibit 62	Expert Report-Supplemental, dated August 9, 2012	Admitted
Respondent's Exhibit 63	Packaging Personified Tax Returns, 2002 and 2003(redacted and un-redacted copies)	Offer-of-proof

Respondent's Exhibit 64	Letter to John Simon from Christopher McClure, dated August 9, 2012	Admitted
Respondent's Exhibit 65	Letter to John Simon from Christopher McClure, dated October 19, 2011	Admitted
Respondent's Exhibit 66	Respondent's motion <i>in limine</i> with attached oral and written testimony of Richard Trzupek's testimony before the House Committee on Science, Space & Technology/Environmental Subcommittee, dated February 14, 2013	Admitted

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on June 3, 2013, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on June 3, 2013:

John T. Therriault  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
312.814.8917

PCB 2004-016  
L. Nichole Cunningham  
Office of the Attorney General  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

PCB 2004-016  
Roy M. Harsch  
Drinker Biddle & Reath  
191 N. Wacker Drive  
Suite 3700  
Chicago, IL 60606-1698

PCB 2004-016  
Christopher J. Grant  
Office of the Attorney General  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

PCB 2004-016  
John A. Simon  
Drinker Biddle & Reath  
191 N. Wacker Drive  
Suite 3700  
Chicago, IL 60606-1698

PCB 2004-016  
Phyllis Muccianti  
Packaging Personified, Inc.  
246 Kehoe Boulevard  
Carol Stream, IL 60188-1816