

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

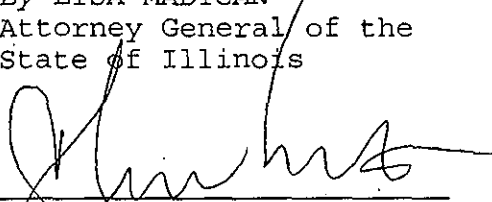
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB 04-16
)	
PACKAGING PERSONIFIED, INC.,)	(Enforcement)
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, February 16, 2006, filed with the Office of the Clerk of the Illinois Pollution Control Board its Response to Respondent's Motion to Compel, a copy of which is attached herewith and served upon you.

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

BY:


CHRISTOPHER GRANT
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Environmental Bureau
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Chicago, IL 60601
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONSE TO RESPONDENT'S MOTION TO COMPEL

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and in Response to Respondent's, PACKAGING PERSONIFIED INC.'s, Motion to Compel Responses to Written Discovery, states as follows:

I. INTRODUCTION

On March 17, 2005, Complainant answered Respondent Packaging Personified, Inc.'s ("PPI's") written discovery requests. Complainant fully objected to a number of interrogatories and document requests on the basis of relevance, that the requests were oppressive, and that they created an unreasonable burden on Illinois EPA. A copy of Complainant's responses are attached hereto as Exhibit 'A'.

Complainant now responds to PPI's Motion with the understanding that the decision will be made by the Hearing Officer pursuant to 35 Ill. Adm. Code 101.616(a).

Complainant has fully and appropriately responded to all

relevant discovery requests, excepting those to which it properly objected. PPI has not moved to compel responses to Interrogatories numbers 3 and 5, or Document Requests 1 and 5, and therefore Complainant will not discuss the basis for its objections in this Response. Along with its Interrogatory responses, Complainant has produced thousands of pages of responsive documents to PPI, and will supplement as appropriate.

The Interrogatories and Document Requests objected to by Complainant are overbroad, deal with matters completely irrelevant to the Board's determination of this case, and place an unreasonable burden on Illinois EPA. PPI's motion must be denied.

II. THE REQUESTED INFORMATION IS NOT RELEVANT TO THIS CASE

Complainant has objected to Interrogatories 6-12 on the basis of relevance. "Relevance" for discovery purposes includes not only what is admissible at trial, but also that which leads to what is admissible. However, the right to discovery is limited to disclosure of matters that will be relevant to the case at hand in order to protect against abuses and unfairness, and a court should deny a discovery request where there is insufficient evidence that the requested discovery is relevant. *TTX Company v. Whitley*, 295 Ill. App. 3d 548, 556 (1st Dist. 1998); *Mistler v. Mancini*, 111 Ill. App. ed 228, 233 (2d Dist. 1982). A court must carefully exercise its discretion in matters

pertaining to discovery "in order balance the needs of truth and excessive burden to litigants. *General Motors v. Bua*, 37 Ill.2d 180, 193 (1967).

a. **The Promulgation of "R93-9" is Not Relevant to this Matter.**

PPI's Interrogatory Requests 6, 7, 8, and 11, and document requests 13, 14, and 15 provide, as follows:

6. Identify all entities who were listed on any IPCB notice lists and service lists for R93-9.
7. Identify all entities who, prior to or during the pendency of R93-9 or after adoption of the Flexographic Printing Rules, received correspondence from or engaged in communications with IEPA related to R93-9 or the Flexographic Printing Rules.
8. For each entity identified in response to either Interrogatory 6 or 7, provide the following information:
 - a. Identify any communications between the entity and IEPA relating to R93-9 or the Flexographic Printing Rules.
 - b. Describe the type of business, including the types of product printed, the inks used, whether the inks used are water-based or solvent-based, and the processes used by the entity.
 - c. Identify the control equipment used by the entity to comply with the Flexographic Printing Rules, the cost associated with the control equipment, and the date the control equipment was employed.

* * *

11. Identify each and every communication between USEPA and the State of Illinois or any Illinois state Agency relating to the Flexographic Printing Rules, including but not limited to promulgation, SIP approval, and enforcement of the Flexographic Printing Rules and variances and adjusted standards from the Flexographic Printing Rules.

The Related Document Requests Provide:

13. All documents relating to R93-9, including but not limited to comments received during the notice-and-comment period.
14. All documents relating to R93-9 provided by IEPA to Packaging Personified either before the rulemaking, during the pendency of R93-9, or after adoption of the Flexographic Printing Rules. [NOTE: this request has been complied with, but is included in PPI's Motion, seemingly in error.]
15. All documents relating to any notice provide by the IPCB to Packaging Personified related to R93-9.

As seen, PPI's discovery requests repeatedly seek information regarding "R93-9". This Board rulemaking began March 16, 1993, and concluded November 22, 1993. The Board web site lists 24 separate activities, including 3 hearings. The Final Order, published on September 9, 1993, runs 616 pages.

In R93-9, the Board enacted the VOM RACT Rules, and created or modified regulations in parts 203, 211, 218, and 219. Almost all of the regulations adopted or modified in R93-9 are totally unrelated to PPI's business, or to this Case. For example, Part 218 contains regulates emissions from sources as varied as petroleum storage tank emissions [218.123], Coating operations [218.204], pharmaceutical centrifuges [218.481], and marine terminals [218.760]. Part 219 applies only to the St. Louis area. The only relation between this case and R93-9 is that Organic Material emission limitations for flexographic printers, were added through this regulatory process. In Counts VII and VIII of the Amended Complaint, Complainant alleges the PPI

violated certain of these regulations.

PPI's discovery requests do not seek information regarding PPI's compliance or non-compliance with the Flexographic Printing rules. Rather PPI seeks information, and huge volumes of documents, regarding the promulgation of the rules themselves. Such information could only be material, if at all, if PPI was challenging either the constitutionality or validity of the regulations. They have not done so.

PPI states:

"[t]hese discovery requests are relevant because Packaging is entitled to determine if other companies received notice or other documents regarding the Flexographic Printing Rules that Packaging did not receive, and if other companies were able to participate in R93-9 at a level of involvement that was not available to Packaging." [PPI Motion, p. 2].

Notably, PPI does not claim that the regulations are *invalid* due to a lack of notice, nor does it make claims of violations of due process or equal protection. Rather, its Motion appears to be making the claim that it was not aware of the Flexographic Printing Rules until cited by Illinois EPA. PPI also makes many such representations in its Answer to the Amended Complaint, e.g.:

"Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including CAAPP requirements, to its operation. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance". [Answer, Count IV, Par. 25.]

However, PPI's alleged ignorance of the requirements of the Flexographic Printing Rules does not provide a defense. A Respondent or Defendant is presumed to know the law; ignorance of it is no excuse. *People v. Acosta*, 331 Ill. App. 3d 1, 6 (2d Dist. 2001) *People v. Draw Drape Cleaners, Inc.* PCB 03-51 (August 19, 2004) (slip op., at 5).

The material issues in our case are whether the regulations were violated, not whether PPI received notice of the 1993 rulemaking. PPI's Motion to Compel Answers to Interrogatories 6, 7, 8 and 11, and Document Requests 13 and 15 should be denied as irrelevant to this case.

b. Information Regarding Other Flexographic Printing Companies is not relevant to this matter.

Interrogatories No. 9, 10, and 12, and Document Requests 16, 17, and 18 seek volumes of information regarding other flexographic printers in the Chicago Area, as follows:

9. Identify each and every communication, related to clean air regulation with respect to permitting, Flexographic Printing Rules, or emissions reduction systems, between IEPA and the following companies:
 - a. Formel Industries, Inc.
 - b. Vonco Products, Inc.
 - c. Bema Film Systems, Inc.
10. Identify each and every flexographic or rotogravure printer business in the Chicago area, as that area is described at 35 IAC 218.100(a).
12. Identify each and every communication between and among IEPA, USEPA, and the companies listed in Interrogatory 9 relating to USEPA approval as SIP revisions of the adjusted standards from the Flexographic Printing Rules granted to

those companies, captioned before the IPCB as AS-00-11, AS-00-12, and AS-00-13.

As justification for this broad request, PPI states:

Interrogatories 9 and 10 ask for information on air regulation and permitting pertaining to companies in the same industry as Packaging Personified. Document Requests 16 [sic] ask for documents relating to adjusted standards and variances sought by companies in the same industry as Packaging Personified. These Discovery Requests are relevant to the extent that other similarly-situated companies received regulatory relief that Packaging could also have received. [PPI Motion, pp. 2-3].

PPI did not seek adjusted standards or variances prior to the filing of this case, and its failure to do so is not at issue. Seemingly, it could have made such application, although whether such relief would have been granted is unknowable. However, adjusted standards or variances sought or obtained by other companies have no relevance to any claim or defense in this case.

PPI's requests are analogous to those addressed in *TTX Company v. Whitley*, 295 Ill. App. 3d 548 (1st Dist. 1998), an appeal of an Illinois corporate tax assessment. TTX Company sought records of other companies who used the same method of tax calculation as TTX, and disputed by the Illinois Department of Revenue. The Appellate Court reversed an order compelling production of this material, deeming the information irrelevant. Significantly, the Appellate Court noted that TTX had not claimed a denial of equal protection or due process. Whether TTX was

treated differently from other companies was not relevant. 295 Ill. App. 3d 548, 557.

Here, PPI seeks extensive information from Illinois EPA regarding actions taken by three unrelated companies in their petition to the Board for adjusted standards.

Section 101.202 of the Board regulations provides:

"Adjusted Standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104, Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

Section 104.400 of the Board regulations provides:

- a) *Description. An adjusted standard has the effect of an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.*

In other words, companies who obtain adjusted standards are governed by those standards. Those who do not, are governed by the rule of general applicability: in our case the Flexographic Printing Rules as promulgated.

PPI cannot claim that it lacks lack knowledge of the subject matter of these adjusted standard petitions: the Board orders granting [and later withdrawing] these adjusted standards are viewable on the Board's web site. Moreover, Illinois EPA has already provided copies of any correspondence with PPI relating to a possible adjusted standard.

In any event, the requested information is clearly not

relevant to this case. PPI did not apply for or obtain an adjusted standard. Rather, as alleged by Complainant, PPI continued to operate in violation of the Flexographic Printing Rules. Companies operating under an adjusted standard were bound by that standard, not the Flexographic Printing Rules. Thus none of the information requested by PPI is relevant to this case. PPI's Motion to Compel responses to Interrogatories Numbers 9 & 12, and Document Requests 16, 17, and 18 should be denied.

PPI also seeks to compel Illinois EPA to identify 'each and every flexographic or rotogravure printer in the Chicago area...', without providing any reasonable explanation as to how this information could be relevant to its case. Illinois EPA does not make or keep such records [see: Affidavit of Donald Sutton, *Exhibit B*, par. 11], and should not be required to assemble information which is equally available to PPI. PPI's Motion to Compel a response to Interrogatory No. 10 should also be denied.

**III. PRODUCTION OF THE REQUESTED INFORMATION
WOULD BE OVERLY BURDENSOME**

The right to discovery is limited to the disclosure of matters that will be relevant to the case at hand in order to protect against abuses. *Leeson v. State Farm*, 190 Ill. App. 3d 359 (1st Dist. 1989). Discovery is not a tactical game to be used to obstruct or harass the opposing litigant. *Williams v. A.E. Staley*, 83 Ill. 2d 559 (1981).

In addition to seeking irrelevant information, PPI's discovery requests are clearly overbroad in scope, unrealistic, and oppressive. PPI seeks to compel Illinois EPA to search thousands of pages of documents for information unrelated to any claim or legitimate defense, and seeks information and documents made, kept, and communicated by other entities, including USEPA, the Board, and other State Agencies.

a. PPI's Requests are Overbroad

As seen above, PPI seeks 'all information', 'all communications', and 'all documents' regarding R93-9, despite the fact that most of the requested information affects industries and/or geographical regions completely unrelated to its business, and regulations unrelated to this case. For example, the R93-9 rulemaking process significantly modified regulations (in Part 219), applicable only in the Metro East area, adjacent to St. Louis. In addition, PPI seeks to compel Illinois EPA to produce information obviously in the possession of third parties. For example, Document Request No. 15 requests "All documents relating to any notice provide by the IPCB to Packaging Personified related to R93-9". Interrogatory number 12 seeks to compel Illinois EPA to identify USEPA communications. As shown by the Affidavit of Donald Sutton, Illinois EPA does not possess (and should not be expected to possess) much of the information demanded by PPI. *Exhibit B, par's 8-12.* PPI certainly must know

that Illinois EPA cannot provide information, for example, in the possession of the Board or USEPA-its demands are clearly an attempt to harass Complainant through overbroad discovery.

b. PPI's Requests are Oppressive

As shown by the Affidavit of Donald Sutton, answering PPI's discovery would involve searching thousands of pages, numerous email communications, and computer generated data. It is estimated that at least thirty-seven hours would be required to search for this irrelevant information. Because of the absence of any showing of relevancy for the produced information, PPI's requests are abusive and clearly oppressive. See, e.g: *General Motors v. Bua*, 37 Ill. 2d 180,193-4 (1967) (extensive production denied absent showing of materiality and relevancy).

IV. CONCLUSION

As shown by Exhibit A, Complainant has properly and completely responded to all of PPI's discovery responses. Where PPI sought relevant information it has been provided. Thousands of pages of documents have been made available to PPI, including responses to Document Request No. 14, mistakenly included in PPI's Motion to Compel.

Where PPI's requests have sought the production of information unrelated to any issue in this matter, Complainant has objected on the basis of relevance. Where PPI's requests were completely unreasonable and oppressive, Complainant has also


objected.

Information regarding the 1993 promulgation of the Flexographic Printing Regulations, is not material to this case, absent a claimed defense regarding the validity of the regulations or the constitutionality of this enforcement action. None have been raised by PPI. Information relating to the Board Petitions of unrelated entities also does not relate to PPI's alleged violations, or any defense thereto. PPI, which did not seek an adjusted standard, was regulated by the Flexographic Printing Rules. Companies which had obtained an adjusted standard, were not.

WHEREFORE, Complainant respectfully requests that the Hearing Officer deny Respondent's Motion to Compel Responses to Written Discovery.

RESPECTFULLY SUBMITTED,

BY:



CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

Exhibit A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

COMPLAINANT'S RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, responds to Respondent's First Set of Interrogatories and First Request for Production of Documents, as follows:

DEFINITIONS AND INSTRUCTIONS

2. **Claim of Privilege.** If any information or documents are withheld because the interrogatory is objected to on grounds of attorney-client privilege, work product or any other grounds, please specify with particularity:

- (a) The portion of the interrogatory to which the withheld information or document is responsive;
- (b) The parties participating in the production, conversation or creating the document, i.e., author, originator, addressee, recipient, and copyee;
- (c) Date of origin or preparation of the document;
- (d) The character of the information or document and its subject matter, as well as a summary of its contents;
- (e) Length in pages of any relevant document;
- (f) The file in which any relevant document was located or from which it is being withheld;
- (g) The present location of any relevant document;

- (h) Custodian of any relevant document;
- (i) The number of copies of any relevant document being withheld; and
- (j) The factual and legal basis upon which a privilege is claimed and/or any other reason for withholding the information or document.

3. **"Document"**. As used herein, the term "document" or "documents" is used in the broadest possible sense, as defined in Rule 201(b)(1) of the Illinois Supreme Court Rules, and means without limitation all written, printed, typed, photostatic, photographed, recorded, machine readable or graphic matter, or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or any estimation thereof however produced or reproduced of every kind and description in your actual or constructive possession, custody, care or control. Without limiting the foregoing, the term "document" shall include the original (or copies where the original is not available) and any copy that differs from the original or other versions or drafts of the document, such as copies containing notations, insertions, corrections or any other variations. Without limiting the generality of the foregoing, "document" shall also include correspondence, letters, memoranda, accounting and financial records, financial statements, notes, diaries, summaries, statements, financial analyses, loan titles, computation sheets, budgets, expense reports, investigation reports, field notes, opinions, forecasts, audits, projections, trade letters, press releases, comparisons, telegrams, drafts, work papers, microfilm, paper and magnetic tapes, computer memory storage devices such as floppy disks or hard disks, sound and video recordings and transcripts of such recordings, charts, computer cards and printouts, computer memory and data bases, e-mail or electronic mail or messages of any kind, minutes, publications, calendars, telephone pads, bulletins, directives, pamphlets, manuals, books diaries, periodicals, photographs, memorials of telephone conversations or meetings or conferences, interoffice communications, records, reports, studies estimates, contracts, amendments, and addenda to such contracts, agreements, invoices, receipts, ledgers, books of account, analytical records, journals, logs, statistical records, costs sheets, time sheets, photographs in job or transaction files, magazines, newspapers, booklets, brochures, pamphlets, circulars, notices, drawings, diagrams, tables, instructions, notes of minutes, questionnaires, surveys, graphs, and any preliminary versions of drafts of the foregoing.

4. **"Person"**. As used herein, the term "person" or "persons" means any natural person, sole proprietorship, firm, corporation, partnership, joint venture, group, association, organization, trust, government or governmental agency, group or any other form of business activity and any other legal entity. Any reference to a "person" shall mean that "person" and all affiliates, divisions, controlled companies, subsidiaries or otherwise related entities and all to his, her or its current and former officers, directors, employees, agents, representatives, attorneys, and accountants.

5. **"Relate"**. As used herein, the term "relate" or "relating to" any given subject means in whole or part constituting, containing, defining, describing, discussing, detailing, embodying, reflecting, identifying, mentioning, stating, referring to, demonstrating, evidencing, alleging to referring, hinting at, dealing with, underlying, supporting or in any way pertaining, concerning or being relevant to that subject, and is meant to include, among other documents, all

documents consisting of, constituting, containing, referring to, discussing, describing, concerning, reflecting or being legally, logically or factually connected in any way with the matter discussed. This term includes, but is not limited to, information underlying, supporting, or necessary for the understanding of any document relating to each interrogatory or answer thereto.

6. **"Communications"**. As used herein, the term "communication" is used in the broadest possible sense and refers, without limiting the generality of this meaning, to any and all forms of transferring information, including discussion, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, discussions, contacts, proposals, memoranda, letters, telegrams, telexes, cables, telephone calls, electronic communication, or any other communication, or notes thereof, or document relating thereto, whether formal or informal.

7. **"Identify"**. As used herein, the term "identify," when used with reference to an individual natural person, means that the answer should include the full name, address and telephone number of the person, as well as the name and address of the person's most recent known employer. When used in reference to any other legal entity, the term "identify" means that the answer should include the most recent known name and address of that entity. When used with reference to a document, the term "identify" means that the answer should include a description of the nature and subject matter of the document, the dates of its preparation, the identify of the author and recipient, and the present location of the document. When used with reference to any other form of communication, the term "identify" means that the answer should include a description of the nature and subject matter of the communication, the date of the communication, and the identity of the persons who participated in or were present at any part of the communication. When used with reference to facts supporting the allegation, the term "identify" means that the answer should include every act, occurrence, transaction, statement, communication or conduct which you claim supports the allegation and every document which you claim supports the allegations.

8. **"Basis"**. As used herein, the term "basis" shall mean that the answer should include the specific facts and legal or business principles which support or tend to support the allegation made.

9. **"And" and "Or"**. As used herein, "and" and "or" shall be construed interchangeably so as to bring within the scope of this request any facts which might otherwise be construed as outside the scope.

10. **"You" or "your"**. As used herein, the terms "you" and "your" refers to the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, State of Illinois employees, contractors, agents, and attorneys and any other persons acting or purporting to act on behalf of the People of the State of Illinois.

11. **"Packaging Personified"**. As used herein, the term "Packaging Personified" refers to Packaging Personified, Inc. or any of its officers, directors, employees, contractors, or agents.

12. **"IEPA"**. As used herein, the term "IEPA" refers to the Illinois Environmental Protection Agency or any of its current or former employees, including but not limited to Director Renee Cipriano, Dave Kolaz, Bharat Mathur, Julie Armitage, David Bloomberg, and Kevin Mattison.

13. **"IPCB"**. As used herein, the term "IPCB" refers to the Illinois Pollution Control Board or any of its current or former employees.

14. **"USEPA"**. As used herein, the term "USEPA" refers to the United States Environmental Protection Agency or any of its current or former employees.

15. **"Act"**. As used herein, the "Act" shall refer to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*

16. **"Complaint"**. As used herein, the term "Complaint" shall mean the administrative complaint filed by the Illinois Attorney General in this matter captioned *People of the State of Illinois v. Packaging Personified, Inc.*, PCB 04-16.

17. **"VOM" or "VOC"**. As used herein, the terms "VOM" and "VOC" refer interchangeably to volatile organic material or volatile organic compounds as defined by or under the Act.

18. **"Facility"**. As used herein, the term "Facility" refers to Packaging Personified Inc.'s operations located at 246 Kehoe Boulevard, Carol Stream, DuPage County, Illinois.

19. **"Flexographic Printing Rules"**. As used herein, the term "Flexographic Printing Rules" refers to the IPCB rules at 35 IAC 218.401 *et seq.*, which regulate organic material emissions from flexographic and rotogravure printing operations in the Chicago area.

20. **"R93-9" or "Rulemaking"**. As used herein, the terms "R93-9" or "Rulemaking" refers to the rulemaking before the Illinois Pollution Control Board captioned as R93-9 that resulted in the adoption of the Flexographic Printing Rules found at 35 IAC 218.401 *et seq.*

21. **"SIP"**. As used herein, the term "SIP" refers to the USEPA-approved Illinois State Implementation Plan for regulation under the Clean Air Act in Illinois.

22. **Other terms.** As used herein, the singular shall be deemed to include the plural; the use of one gender shall include all genders, as appropriate in context; and the present tense shall include the past tense.

23. **"Time Period"**. The time period referred to in these interrogatories, unless specifically indicated to the contrary, is from January 1, 1989 to the present.

COMPLAINANT'S GENERAL OBJECTIONS

Complainant objects to Respondent's Interrogatories and Document Request to the extent that Respondents seek information protected by attorney client, work product, or other legally recognized privilege. In addition Complainant objects to "Definitions and Instructions", paragraphs 2, 3, 6, 7, 8, to the extent that they may be construed as overbroad, overly burdensome, or that they seek the production of information neither relevant nor material to this matter.

INTERROGATORIES

1. *Identify the person or persons providing the answers to these Interrogatories, and, for each answer, identify the information provided by each such person.*

ANSWER:

David Bloomberg, Unit Manager, Illinois EPA Bureau of Air, Springfield, Illinois:

Interrogatories No. 1, 2, 4, and 14.

Maureen Wozniak, Illinois EPA Division of Legal Counsel: Interrogatories No. 1, 2, 4, 13, and 14.

Christopher Grant, Attorney for Complainant, assisted and provided the answers to Interrogatories No.'s 3, and 5 through 12.

2. *Identify each and every basis in support of your allegations in Paragraph 5 of Count I of the Complaint that the Facility has the potential or capacity to emit in excess of 25 tons of VOM per year" and that the Facility's "actual 2002 VOM emissions were at least 44 tons."*

ANSWER:

Complainant objects on the basis that the meaning of the phrase "...each and every basis" is ambiguous and vague. Further answering, operational information and emissions data, in part contained within annual emission reports (AERs), Seasonal Emissions Reports (SERs), permit applications, compliance commitment agreement (CCA), and communications received by the Illinois EPA from Packaging Personified, Inc., document that the Facility has the potential to emit VOM at levels in excess of the major source threshold specified by the Act and Board's regulations thereunder for the Chicago nonattainment area. In addition, Illinois EPA inspection memoranda setting forth observations by the Illinois EPA resulting from inspections of the Facility, violation notice letters (VNs), and documents generated by the Illinois EPA relative to VOM emissions by the Facility in excess of 25 tons/year in violation of the Act and Board regulations by Respondent further support violations that are the subject of the State's complaint. Documents upon which the State will rely have been provided in response to Respondent's document requests 1 through 12, and 17. Investigation into these matters continues.

3. *Identify each and every basis in support of your allegations in Paragraphs 18 and 19 of Count V.*

ANSWER:

Complainant objects to Interrogatory No. 3. The Interrogatory is improper in form. It is vague, overbroad, and requires Complainant to speculate as to the information sought by Respondent.

4. *Identify each and every basis in support of your allegation in Paragraph 14 that the Facility emitted more than 10 tons of VOM during the five month period from May 1 until September 30 for each year from 1997 until the filing of the Complaint.*

ANSWER:

Complainant objects insofar as the meaning of the phrase "...each and every basis" is ambiguous and vague. Further answering, operational information and emissions data, in part contained with AERs, SERs, permit applications, CCAs, and communications received by the Illinois EPA from Packaging Personified, Inc., document actual and/or potential VOM emissions of at least 10 tons, the threshold for a participating source under the Emissions Reduction Market System, during the period of May 1 to September 30 each year from 1999 until the present. Documents upon which the State will rely have been provided in response to Respondent's document requests 1 through 12 and 17

5. *Identify each and every basis in support of your allegations in Paragraphs 10, 11, 17, and 19 of Count VII of the Complaint.*

ANSWER:

Complainant objects to Interrogatory No. 5. The Interrogatory is improper in form. It is vague, overbroad, and requires Complainant to speculate as to the information sought by Respondent.

6. *Identify all entities who were listed on any IPCB notice lists and service lists for R93-9.*

ANSWER:

Complainant objects to Interrogatory No. 6 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The promulgation of this section of 35 Ill. Adm. Code, and R93-9 as herein defined, does not relate to any claim or defense in the instant case.

7. *Identify all entities who, prior to or during the pendency of R93-9 or after adoption of the Flexographic Printing Rules, received correspondence from or engaged in communications with IEPA related to R93-9 or the Flexographic Printing Rules.*

ANSWER:

Complainant objects to Interrogatory No. 7 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Neither the promulgation of the Flexographic Printing Rules nor the identity of correspondents, other than the Respondent, relates to any claim or defense in the instant case.

8. *For each entity identified in response to either Interrogatory 6 or 7, provide the following information:*

- a. *Identify any communications between the entity and IEPA relating to R93-9 or the Flexographic Printing Rules.*
- b. *Describe the type of business, including the types of product printed, the inks used, whether the inks used are water-based or solvent-based, and the processes used by the entity.*
- b. *Identify the control equipment used by the entity to comply with the Flexographic Printing Rules, the cost associated with the control equipment, and the date the control equipment was employed.*

ANSWER:

Plaintiff objects to Interrogatory No.8 as immaterial and irrelevant. See: Answers to Interrogatories 6 and 7. Nothing in the information sought in Interrogatory No. 8 relates to any claim or defense in the instant case. Moreover, Interrogatory No. 8 is overly burdensome. Obtaining the requested information would require Complainant to search thousands of records, and assemble information not regularly kept in the course of its operations.

9. *Identify each and every communication, related to clean air regulation with respect to permitting, Flexographic Printing Rules, or emissions reduction systems, between IEPA and the following companies:*

- a. *Formel Industries, Inc.*
- b. *Vonco Products, Inc.*
- c. *Bema Film Systems, Inc.*

ANSWER:

Complainant objects to Interrogatory No. 9 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Correspondence between Complainant and the above-listed entities does not relate to any claim or defense in this matter.

10. *Identify each and every flexographic or rotogravure printer business in the Chicago area, as that area is described at 35 IAC 218.100(a).*

ANSWER:

Complainant objects to Interrogatory No. 10 as it seeks information that is immaterial, irrelevant, not reasonably calculated to lead to relevant information, and is overly burdensome.

11. *Identify each and every communication between USEPA and the State of Illinois or any Illinois state agency relating to the Flexographic Printing Rules, including but not limited to promulgation, SIP approval, and enforcement of the Flexographic Printing Rules and variances and adjusted standards from the Flexographic Printing Rules.*

ANSWER:

Complainant objects to Interrogatory No. 11 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The information sought does not relate in any way to the claims or defenses in the instant matter.

12. *Identify each and every communication between and among IEPA, USEPA, and the companies listed in Interrogatory 9 relating to USEPA approval as SIP revisions of the*

adjusted standards from the Flexographic Printing Rules granted to those companies, captioned before the IPCB as AS 00-11, AS 00-12, and AS 00-13.

ANSWER:

Complainant objects to Interrogatory No. 12 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The information sought does not relate in any way to any claim or defense in the instant matter.

13. *Identify each and every basis in support of the amount of penalty you are seeking, including but not limited to:*

- a. *The determination of the amount of economic benefit that you assert Packaging Personified received as a result of the non-compliance alleged in the Complaint.*
- b. *The basis for the economic benefit determination, including all informational inputs, all formulas used, any software used to calculate the economic benefit, and all assumptions of the economic benefit model used.*
- c. *Identify the individuals involved in determining the penalty amount and economic benefit amount.*

ANSWER:

Complainant objects insofar as the meaning of the phrase "...each and every basis" is ambiguous, vague and not defined. Further answering, Complainant has not yet determined the penalty it will ask the Board to assess in this matter. Complainant notes that penalties sought are found in the prayer for relief in each count of the Complaint, and that Statutory penalties are contained in 415 ILCS 5/42 (2002). Additional counts may be added by amendment, which will increase the amount of penalties sought by Complainant. Complainant may also seek avoided/past due costs and fees, expert witness cost and attorney fees. The amount of these costs and fees is not yet determined.

- a. Complainant will seek from Packaging Personified, Inc. a civil penalty, in part, representative of the economic benefit of noncompliance (BEN) derived by Respondent from

violations of New Source Review (NSR) and State permitting requirements, the Illinois Environmental Protection Act, and Pollution Control Board regulations thereunder alleged in the State's Complaint. Using USEPA's BEN Windows Computer Model, Illinois EPA originally estimated Respondent's BEN at approximately \$585,000.00. However, Illinois EPA will not rely upon the BEN computer model in preparation for and at hearing in this matter.

Accordingly, the civil penalty the State will seek is subject to revision dependant upon the economic benefit analysis and specific methodology Complainant will utilize at hearing, additional information received by Complainant relative to compliance costs, and the gravity of violations that are the subject of the State's Complaint. The Illinois EPA will determine the economic benefit of noncompliance based upon an economic benefit analysis performed by Illinois Office of Internal Audit, Audit Manager, Gary Styzens.

b. The Illinois EPA used the USEPA's BEN Model as the basis for its initial penalty calculation. Inputs and assumptions used in the model were based upon information provided by the Facility, and are set forth within the BEN calculation sheet provided in response to Respondent's document requests. However, the Illinois EPA does not intend to rely on the BEN Model as support for its penalty calculation; rather, Mr. Gary Styzens will perform an independent economic benefit analysis.

c. Complainant objects on the basis that the Board, not Complainant, assesses appropriate penalties, using pertinent provisions within the Act. Further answering, the

Following persons were involved in determining Economic Benefit:

Maureen Wozniak
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Julie Armitage
Managing Attorney
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Christopher Grant
Assistant Attorney General

The economic benefit derived by Respondent resulting from noncompliance with the Act and Board regulations thereunder was calculated by Illinois EPA Assistant Counsel Maureen Wozniak utilizing the USEPA BEN Windows computer model and compliance cost data received by Illinois EPA from Respondent to facilitate settlement discussions.

This interrogatory will be supplemented as appropriate.

14. *Identify all witnesses whom you intend to have testify at the hearing, including the following information:*

- a. *For each lay witness, identify the subjects on which the witness will testify.*
- b. *For each independent expert witness, identify the subjects on which the witness will testify and opinions you expect to elicit.*
- c. *For each controlled expert witness, identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.*

ANSWER:

a. David Bloomberg, Compliance Unit Manager/Bureau of Air, Illinois EPA Springfield, Illinois. Mr. Bloomberg will offer testimony on the Emissions Reduction Market System (ERMS) and NSR requirements; flexographic printing, in general; applicable regulatory provisions; the Facility's compliance with the applicable regulatory provisions; and other specific information regarding the Facility.

b. As of the date of Answering these Interrogatories, Complainant has not identified expert witnesses that will be called to testify, and opinions have not been obtained.

c. At the present, the State has not identified a controlled expert witness that will be called to testify at hearing, with the exception of Mr. Gary Styzens. Mr. Styzens will offer testimony that provides an analysis of the time value of money specifically pertaining to economic benefits derived by Packaging Personified, Inc. resulting from costs avoided and/or delayed resulting from its failure to operate in compliance with the Act and Board regulations thereunder. Gary Styzens has not, to date, finalized an economic benefit analysis or generated reports setting forth opinions and conclusions based upon his review of all pertinent information relative to Packaging Personified.

The State will seasonably supplement this Answer consistent with Supreme Court Rule 213 and 35 Ill. Adm. Code 101.616.

DOCUMENT REQUESTS

1. *All documents relating to the allegations in the Complaint.*

RESPONSE:

Complainant objects the Document Request No. 1 as being overly vague.

2. *All documents identified in your responses to Interrogatories 1-14 or reviewed in the course of responding to Interrogatories 1-14.*

RESPONSE:

See: Answers to Interrogatories No. 1 through 14, and objections thereto, which are incorporated by reference into this Response. Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188

W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois.

Complainant will consult with Respondent regarding the location of production.

3. *All documents you intend to use at any depositions in this case.*

RESPONSE:

Complainant does not currently have depositions scheduled, and does not have documents selected for deposition. This Response will be supplemented as required.

4. *All documents you intend to offer as evidence at the hearing in this case,*

RESPONSE:

Complainant does not yet have documents selected for use at hearing, and will supplement this Response as required.

5. *All documents you intend to use in any manner or for any purpose at the hearing in this case.*

RESPONSE:

Complainant objects to Document Request No. 5 as overly vague. See: Response to Document Request No. 4.

6. *All photographs, models, slides, films, videotape, drawings or other depictions of the Facility.*

RESPONSE:

Complainant will produce responsive photographs, etc., at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

7. *All documents referring or relating to any communications between IEPA and Packaging Personified.*

RESPONSE:

Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

8. *All documents relating to submittals to IEPA from Packaging Personified, including but not limited to permit applications, reports, and other information.*

RESPONSE:

Complainant objects on the basis that the requested documents are already in the possession of Respondent. Further Answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

9. *All documents relating to any inspection or site visit performed at the Facility by IEPA or any other State of Illinois employee or agency.*

RESPONSE:

Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

10. *All documents referring or relating to communications of any kind within IEPA concerning the Facility or the allegations of the Complaint.*

RESPONSE:

Complainant objects to Document Request No. 10 as overly vague. Further answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

11. *All documents referring or relating to communications of any kind between IEPA and any third party concerning the Facility or the allegations of the Complaint.*

RESPONSE:

Complainant objects to Document Request no. 11 as overly vague. Further answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

12. *All documents relating to your computation, calculation or estimation of a penalty for the violations alleged in the Complaint.*

RESPONSE:

Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

13. *All documents relating to R93-9, including but not limited to comments received during the notice-and-comment period.*

RESPONSE:

Complainant objects to Document Request No. 13 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. The proceedings of R93-9, and promulgation of the Flexographic Printing Rules do not relate to any claim or defense in this matter. Moreover, Respondent's request is overly burdensome.

14. *All documents relating to R93-9 provided by IEPA to Packaging Personified either before the Rulemaking, during the pendency of R93-9, or after adoption of the Flexographic Printing Rules.*

RESPONSE:

Complainant objects to Document Request No. 14 to the extent that it seeks information that is immaterial and irrelevant to the instant case. Complainant also objects on the basis that any responsive documents are already in the possession of Respondent. Further answering, Complainant will produce relevant, non-privileged documents at a time agreed between the parties. Documents will be produced at 188 W. Randolph, #2001, Chicago Illinois, and 1021 N. Grand Avenue East, Springfield, Illinois. Complainant will consult with Respondent regarding the location of production.

15. *All documents relating to any notice provided by the IPCB to Packaging Personified related to R93-9.*

RESPONSE:

Complainant objects to Document Request No.15 as vague, and that it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. See: Response to Document Request No. 14.

16. *All documents relating to the following Adjusted Standard Petitions before the IPCB:*

- a. *In the Matter of Petition of Formel Industries, Inc. for an Adjusted Standard, AS 00-13*
- b. *In the Matter of Petition of Vonco Products, Inc. for an Adjusted Standard, AS 00-12*
- c. *In the Matter of Petition of Bema Film Systems, Inc. for an Adjusted Standard, AS 00-11*

RESPONSE:

Complainant objects to Document Request No. 16 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Adjusted Standard petitions filed by third parties in an unrelated Board matter have no relation to the instant case.

16. [Sic] *All documents relating to the following Petitions for Variance from the Flexographic Printing Rules before the IPCB:*

- a. *Formel Industries, Inc., PCB 99-165*
- b. *Vonco Products, Inc., PCB 99-167*
- c. *Bema Film Systems, Inc., PCB 9-170*

RESPONSE:

Complainant objects to this document request as it seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to relevant information. See: Response to Document Request No. 16 [above].

17. *All documents relating to the Flexographic Printing Rules, including but not limited to promulgation of the Flexographic Printing Rules, variances and adjusted standards*

from the Flexographic Printing Rules, and enforcement of the Flexographic Printing Rules by USEPA, the State of Illinois, or any other entity with administrative or judicial enforcement authority with respect to the Flexographic Printing Rules.

RESPONSE:

Complainant objects to Document Request No. 17 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information. Further objecting, Respondent's request is highly oppressive and overly burdensome.

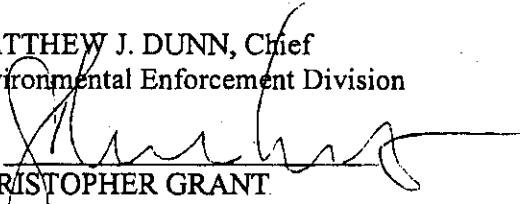
18. *All documents relating to USEPA approval as SIP revisions of the adjusted standards cited in Document Request 16.*

RESPONSE:

Complainant objects to Document Request No. 18 as it seeks information that is immaterial, irrelevant, and not reasonably calculated to lead to relevant information in the instant case.

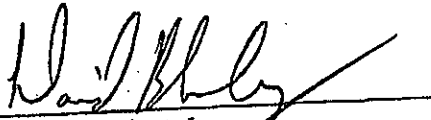
PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General of the State
of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

By: 
CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Fl.
Chicago, Illinois 60601
(312) 814-5388

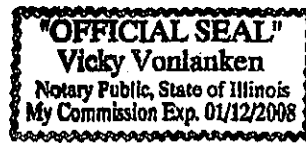
VERIFICATION


I, David Bloomberg, Bureau of Air Compliance Unit Manager for the Illinois Environmental Protection Agency, depose and state, that I have read the attached Responses to Respondent's First Set of Interrogatories and Request for the Production of Documents, and that the answers to Interrogatories 1, 2, 4, and 14 are true and correct, to the best of my knowledge and belief.



David Bloomberg

SUBSCRIBED AND SWORN TO BEFORE
me this 17th DAY OF March, 2005





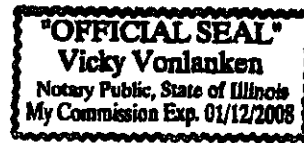
NOTARY PUBLIC

VERIFICATION

I, Maureen Wozniak, Assistant Counsel for the Illinois Environmental Protection Agency, depose and state, that I have read the attached Responses to Respondent's First Set of Interrogatories and Request for the Production of Documents, and that the answers to Interrogatories 1, 2, 4, 13, and 14 are true and correct, and that the production of documents is complete, to the best of my knowledge and belief.

Maureen Wozniak
Maureen Wozniak

SUBSCRIBED AND SWORN TO BEFORE
me this 17th DAY OF March, 2005



Vicky Vonlancken
NOTARY PUBLIC

Exhibit B

AFFIDAVIT OF DONALD SUTTON

I, DONALD SUTTON, after being duly sworn on oath, state that if called upon to testify in this matter, I would competently testify as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as Manager of the Permit Section for the Bureau of Air. I have held this position title for, and have worked for Illinois EPA for a total of ~~xxx~~¹⁴ years.

2. My current responsibilities include overseeing all facets of air permitting and the records unit. I am familiar with the reports and records maintained by Illinois EPA, Bureau of Air.

3. I am familiar with the enforcement case People v. Packaging Personified, Inc., now pending before the Illinois Pollution Control Board as case No. PCB 04-16.

4. I have reviewed the Interrogatories and Document Requests submitted by Packaging Personified Inc. in PCB 04-16, and am familiar with the subject matter of the request.

5. The Pollution Control Board rule making process referred to as "R93-9" resulted in the promulgation of certain regulations now found in 35 Ill. Adm. Code Parts 203, 211, 218 and 219. Part 203 regulates all defined sources of any regulated contaminant. Part 211 provides definitions. Part 218 regulates emissions of organic material from stationary sources in the Chicago area. Part 219 regulates emissions of organic material from stationary sources in the Metro East region of Illinois.

6. PPI's Interrogatories 6, 7, 8, and 11, would require Illinois EPA to search hundreds of documents, comprising thousands of pages, including hundreds of records regarding emission sources unrelated to PPI's business. Assuming that each document would require at

least five minutes review to determine its relevancy, I estimate that approximately 37 person-hours would be required to assemble the information requested.

7. PPI's Interrogatories 9 and 12 would require the Illinois EPA to search hundreds of pages of information, including information archived and no longer readily available to the Illinois EPA and information regarding entities not related to this matter. Assuming that each document would require at least five minutes review to determine its relevancy, I estimate that 37 person-hours would be required to assemble the information requested.

8. Interrogatory No. 11 also requests 'every communication between USEPA and the State of Illinois or any Illinois state agency....'. Illinois EPA does not have access to all such correspondence by USEPA.

9. Interrogatory No. 6 requests "the identity of all entities list on ICPB notice lists and service lists." The Illinois EPA does not have access to all such correspondence by the ICPB.

10. Interrogatory No. 7 requests "each and every communication between and among IEPA, USEPA, and companies listed in Interrogatory 9...". The Illinois EPA does not have access to all such correspondence by USEPA and by the referenced companies. Further, the information does not relate to this matter.

11. PPI's Interrogatory No. 10 requests a list of 'each and every flexographic or rotogravure printer business in the Chicago area, as that area is described at 35 IAC 218.100(a)." Illinois EPA does not keep or maintain a list of all flexographic or rotogravure printing business in the Chicago area, and would have to expend considerable resources to compile such a list.

12. PPI's Document requests numbers 13 through 17 would also require a search of many thousands of pages of documents, numerous email communications and computer

generated data. Moreover, much of the requested subject matter would be in the custody of the Illinois Pollution Control Board, not the Illinois EPA.

FURTHER AFFIANT SAYETH NOT

Donald E Sutton
Donald Sutton

Subscribed and Sworn to
before me this 15th day of
February 2006

Brenda Boehner
NOTARY PUBLIC

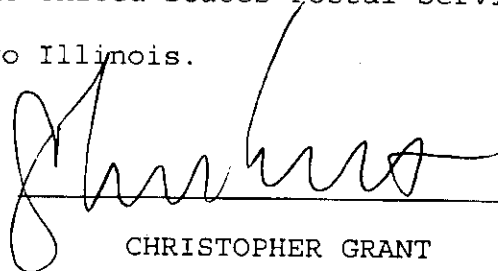


BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 16th day of February, 2006, the foregoing Response to Motion to Compel, and Notice of Electronic Filing, upon the persons listed below, 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
Garder Carton Douglas
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698

Mr. Bradley P. Halloran
Hearing Officer, IPCB
100 W. Randolph, Chicago IL
via hand delivery