

ILLINOIS POLLUTION CONTROL BOARD
JUNE 29th, 2009

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 -vs-)
)
 PACKAGING PERSONIFIED, INC.,)
 an Illinois corporation,)
)
 Respondent.)

PCB 04-16
(Enforcement-Air)

REPORT OF PROCEEDINGS of the above-entitled
matter held at 209 North York Street, Elmhurst,
Illinois, on the 29th day of June, 2009, commencing
at the hour of 9:03 a.m.

ILLINOIS POLLUTION CONTROL BOARD
100 WEST RANDOLPH STREET
SUITE 11-500
CHICAGO, ILLINOIS 60601
HEARING OFFICER: MR. BRADLEY HALLORAN

1 A P P E A R A N C E S:

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OFFICE OF THE ATTORNEY,
3 STATE OF ILLINOIS
69 West Washington Street
4 Suite 2800
Chicago, Illinois 60602
5 (312) 814-3000

6

BY: MR. CHRISTOPHER GRANT
MS. PAULA BECKER WHEELER

7

Appeared on behalf of the Complainant;

8

DRINKER, BIDDLE & REATH, L.L.P.
9 191 North Wacker Drive
Suite 3700
10 Chicago, Illinois 60606
(312) 569-1000

11

BY: MR. ROY M. HARSCH
MS. YESENIA VILLASENOR-RODRIGUEZ

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Appeared on behalf of the Respondent.

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm a
3 hearing officer at the Illinois Pollution
4 Control Board. I'm also assigned to this
5 matter entitled People of the State of
6 Illinois, the Complainant, versus Packaging
7 Personified, Inc., the Respondent.

8 Today is June 29th, 2009. It's
9 approximately 9:03 a.m. This hearing was
10 scheduled in accordance with the Illinois
11 Environmental Protection Act and the
12 Pollution Control Board rules and procedures.
13 It will be conducted according to procedural
14 rules found at Sections 101 and 103 of the
15 Board's procedural rules.

16 This is an air enforcement
17 proceeding. And, as I recall, the original
18 complaint had eight counts and the State
19 filed its first amended complaint with an
20 additional four counts, so I think a total of
21 12 counts.

22 As most of you know, I don't make
23 the ultimate decision in the case, that's up
24 to the Board members. I'm just here to rule

1 on any evidentiary matters and make sure the
2 record is clear so that the Board can make
3 its decision.

4 Ms. Wheeler, would you like to
5 introduce yourself, please?

6 MS. WHEELER: Yes. My name is Paula
7 Becker Wheeler, Assistant Attorney General.

8 HEARING OFFICER HALLORAN: Thank you.

9 MR. GRANT: My name is Chris Grant,
10 G-R-A-N-T, also an Assistant Attorney
11 General.

12 HEARING OFFICER HALLORAN: Mr. Harsch.

13 MR. HARSCH: Roy Harsch on behalf of
14 Packaging Personified.

15 MS. VILLASENOR-RODRIGUEZ: And Yesenia
16 Villasenor-Rodriguez, also on behalf of
17 Packaging Personified.

18 HEARING OFFICER HALLORAN: Thank you.
19 Before we begin openings, if we do have any,
20 any issues to be taken care of first?

21 MS. WHEELER: Yes, your Honor. I
22 wanted to do -- well, we have a stipulation
23 to put into evidence. We also have
24 documents -- exhibits that we've agreed on to

1 be put into evidence. And I want to -- that
2 was basically it, your Honor.

3 HEARING OFFICER HALLORAN: Okay.
4 We'll address that as it comes up.

5 Ms. Wheeler, would you like to
6 give opening?

7 MS. WHEELER: Just a brief one, your
8 Honor. Your Honor, this is a fairly simple
9 case. It concerns Packaging Personified,
10 Incorporated, which is a polyethylene and
11 polypropylene and film processing printing
12 facility located at 246 Kehoe in Carol
13 Stream.

14 They've operated without a
15 construction permit or operating permits for
16 their emission sources from the time that
17 they were constructed in 1992 and 1995 until
18 at least 2001 when there was an inspection by
19 the Illinois EPA for the first time.

20 And then in 2002, one of the four
21 presses that was totally uncontrolled was
22 decommissioned and not used as an emission
23 source after that. Other than these -- they
24 had four printing presses at the time of this

1 inspection in 2001. Presses one and two used
2 mostly water-based inks. Presses four and
3 five used solvent-based inks that were
4 non-compliant.

5 Press five had a recirculating
6 oven connected to it that possibly partially
7 controlled the emissions. Press four was
8 totally uncontrolled. And the inspection
9 was -- the first inspection by any regulatory
10 authority was November 29th of 2001. In
11 December 2002 they stopped using press four.

12 In December of 2003 they attached
13 an RTO to press five and it was subsequently
14 found to be operating in compliance. They
15 also added a sixth press to replace the press
16 four in 2003-2004, in that time frame.

17 Most all of the facts are
18 uncontested, your Honor. What is contested
19 is the interpretation and application of the
20 statutes and regulations to the actions of
21 the defendant/respondent, and also what the
22 amount of the economic benefit was.

23 The cost of the RTO that was used
24 to control press five and press six was

1 \$250,000. We think there's also costs
2 associated with running that.

3 So we will be discussing and
4 putting on evidence as to the economic
5 benefit to show that they ran these presses
6 and derived an economic benefit from it for a
7 long period of time and, of course, that goes
8 to the gravity element. So we believe that's
9 what the evidence will show.

10 HEARING OFFICER HALLORAN: Thank you.
11 Counsel, just remember to keep your voice up.
12 Thank you. Mr. Harsch.

13 MR. HARSCH: Ms. Wheeler has done a
14 pretty good job of relating most of the
15 facts. A few of them aren't quite right.

16 The first inspection was conducted
17 in October of 2001 and the inspection report
18 I think is dated November 2001. At any rate,
19 that's one of my exhibits.

20 Packaging Personified is a
21 family-owned business. She's actively
22 described a number of presses that were
23 present. You will hear, the Board will hear
24 that as a small flexographic printing

1 operation, they simply were unaware of the
2 environmental regulations until the
3 inspection in October of 2001.

4 They immediately proceeded to take
5 steps to come into compliance, worked with
6 their former counsel and hired Rich Trzupsek,
7 then of Huff & Huff, to assess whether they
8 were in compliance or not and give them
9 advice as to how to proceed. And as the
10 case -- time goes on, totally turned over
11 basically record keeping to Mr. Trzupsek for a
12 time.

13 And that work by Mr. Trzupsek began
14 in December of this first visit to the plant
15 and throughout 2002. To date, he has
16 continued to work with Packaging Personified
17 to assist them in coming into compliance.

18 We strongly disagree with the
19 position taken by the State in terms of how
20 they calculated economic benefit. And,
21 frankly, because of that large sum and the
22 State's demand that the settlement cover that
23 large sum, that's why we're in litigation
24 here today.

1 There hasn't been many cases that
2 have been litigated on economic benefit and
3 the State's recovery of economic benefit and
4 we're here today to litigate one of those
5 cases.

6 It's a small company, Packaging
7 Personified, a small printer, essentially is
8 no different than the other flexographic
9 printers that it competes with in the
10 Chicagoland area and elsewhere.

11 And you will hear throughout this
12 proceeding of Mr. Trzupsek's efforts of
13 working with other printers and then
14 Packaging Personified's actions that they
15 proceeded to take following becoming aware of
16 the regulations. When the Board looks at
17 that, I think it will see that they
18 immediately began steps to come into
19 compliance.

20 For whatever reason, the permit
21 applications that were first filed in 2002,
22 the CAAPP application subsequently replaced
23 with a federally enforcement state operating
24 permit CAAPP application, remained unissued

1 to date. All is correct. Construction
2 permits were granted. And we disagree with
3 their conclusion as to why the RTO unit was
4 installed in press five. That will be an
5 issue in this case.

6 We believe Mr. Trzupsek so states
7 in his expert report that presses one and two
8 always used water-based ink and have always
9 complied, therefore, with the substantive
10 requirements of the Board rules for
11 flexographic printers.

12 Press four was an uncontrolled
13 press. It did use solvent-based inks. It
14 was last used for printing in December
15 of 2002.

16 Press five was a recirculating
17 solvent-based press. Mr. Trzupsek will
18 testify as to his opinion regarding whether
19 that press complied with the substantive
20 requirements of the printing regulations at
21 the time as equipped, and he will testify
22 that it did.

23 And key to this case I think is
24 the State's contention throughout the

1 proceeding that Packaging Personified
2 received a packet of information in 1997
3 apprising flexographic printers that they are
4 going to be subject to the rule being adopted
5 by the Board.

6 And you will hear the sworn
7 testimony from the general manager of
8 Packaging that he never received that letter.
9 He's checked with his father, the owner of
10 the company, he never received it.

11 And I believe you will hear the
12 testimony that had they received it, they
13 would have been apprised of those regulations
14 in 1997. And the Court can, I think,
15 conclude by the actions that they've taken
16 that they would have immediately began coming
17 into compliance with regulations back then,
18 as well.

19 There's no excuse. We're not
20 claiming that there's a legal excuse for not
21 knowing about the regulations. It's a fact
22 of life they did not as a small printer.

23 HEARING OFFICER HALLORAN: Thank you,
24 Mr. Harsch. Ms. Wheeler, your first witness.

1 MS. WHEELER: Your Honor, we would
2 like to put these stipulations in first. We
3 are in agreement on all of the People's
4 exhibits, the Complainant's exhibits, which
5 are numbered 1 through 13, which I believe
6 you have a copy up there.

7 And as to the Respondent's
8 exhibits, we are in agreement on Nos. 1
9 through 7, Nos. 9 through 14, Nos. 16 through
10 21 --

11 MR. HARSCH: Can you go a little
12 slower on that?

13 MS. WHEELER: Sure. 1 through 7, 9
14 through 14, 16 through 21, 24, 26 through 28,
15 32 through 39, 42 through 44, 50, 52. And I
16 don't have the most current. They changed
17 the exhibits a couple days ago. I don't know
18 what the last two are.

19 MS. VILLASENOR-RODRIGUEZ: The last
20 two is Rich Trzupek's expert report.

21 MS. WHEELER: His newest one?

22 MS. VILLASENOR-RODRIGUEZ: Correct.

23 And then --

24 MR. GRANT: Is that 53?

1 MS. VILLASENOR-RODRIGUEZ: I'm sorry?

2 MR. GRANT: Is that 53?

3 MS. VILLASENOR-RODRIGUEZ: Fifty-five.

4 And then 56 is the CAAPP permit.

5 MS. WHEELER: So we would accept 55 as
6 the CAAPP permit and I believe we're
7 accepting Mr. Trzupek's --

8 MR. GRANT: Fifty-six.

9 MS. WHEELER: Okay, 56. We're
10 accepting Mr. Trzupek's report with a caveat.

11 MR. GRANT: Yeah. We object to the
12 last page of Mr. Trzupek's expert report.
13 That will come up, I'm sure, in testimony and
14 I'll put the objection in.

15 MS. VILLASENOR-RODRIGUEZ: Paula,
16 after 44 and before 50, which ones did you
17 agree to, if any?

18 MS. WHEELER: Forty-four and 50,
19 that's it.

20 Also, the stipulation that we both
21 agreed to, your Honor, that has been signed
22 is an amendment to the request to admit to
23 reflect the correct answers or corrected
24 answers. It was I think mostly a typo issue,

1 your Honor.

2 HEARING OFFICER HALLORAN: Great.
3 I'll mark this stipulation as Hearing Officer
4 Exhibit 1 and I'll accept it into evidence.

5 MS. WHEELER: Thank you. And we would
6 ask that all of these responses be admitted
7 into evidence, also.

8 HEARING OFFICER HALLORAN: No
9 objection. They will be admitted. And do me
10 a favor, when you do address these specific
11 exhibits that have been agreed to and have
12 been accepted and admitted into evidence,
13 that you state for the record what exactly
14 they are so we can go back and it won't be
15 confusing.

16 It looks like we have the
17 housekeeping over with. Thank you.

18 Ms. Wheeler, you can call your
19 first witness.

20 MS. WHEELER: The people would call
21 Richard Trzupek, pursuant to subpoena here.

22 (Witness sworn.)

23 MR. GRANT: Mr. Hearing Officer,
24 Mr. Trzupek, my name is Christ Grant. I'm

1 with the Attorney General's Office. We
2 haven't met. I was just recently added on
3 the case.

4 Mr. Hearing Officer, I request
5 leave to handle Mr. Trzupek as an adverse
6 witness. He's a compensated expert witness
7 for the Respondent and has given his
8 deposition in this case. I think it will
9 be expeditious and also I think it's
10 appropriate because he's a compensated
11 expert.

12 HEARING OFFICER HALLORAN: Mr. Harsch.

13 MR. HARSCH: I don't have any
14 objection.

15 HEARING OFFICER HALLORAN: Okay.

16 WHEREUPON:

17 RICHARD TRZUPEK
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRANT:

22 Q: Mr. Trzupek, I think -- I was going to
23 put your resumé in. I think we'll probably do that
24 in Mr. Harsch's. I think it's in the exhibits. But

1 you're a chemist, but not an engineer; is that
2 correct?

3 A. That's correct.

4 Q. And you're familiar with Packaging
5 Personified's business?

6 A. I am.

7 Q. And you've worked on environmental
8 compliance issues with other flexographic printers,
9 as well?

10 A. That's correct.

11 Q. You've worked on an adjusted standard
12 petition for Formel Industries, Inc.; is that true?

13 A. That is correct.

14 Q. And you testified at the Board hearing
15 on their request for an adjusted standard in 2000;
16 is that correct?

17 A. That is correct.

18 Q. And your testimony in that matter was
19 under oath, just as today, correct?

20 A. That is correct.

21 Q. At the time of your Formel testimony,
22 I believe that you were employed by Huff & Huff?

23 A. That is correct.

24 Q. And previously worked with Formel

1 while at Air Solutions, Incorporated; is that
2 accurate?

3 A. I believe that's correct.

4 Q. I'm going to ask -- at this point
5 we're going to ask a few questions about that, about
6 the testimony and what you said at that point.

7 MR. GRANT: I'm wondering, Mr. Harsch,
8 would you have any objection if I gave him a
9 copy of his testimony from that hearing taken
10 off the Board's website? I'll show you the
11 document I'm talking about.

12 HEARING OFFICER HALLORAN: You have to
13 keep your voice up.

14 MR. HARSCH: This is the same
15 proceeding that he objected to my request for
16 discovery to get into as being irrelevant to
17 these proceedings when I moved for discovery
18 of the Formel proceeding and asking questions
19 of you, Mr. Grant, when you were handling the
20 case.

21 HEARING OFFICER HALLORAN: I didn't
22 have that, I don't believe, the Formel. Is
23 that --

24 MR. HARSCH: Mr. Grant, is that --

1 this is the same case?

2 MR. GRANT: Well, what I recall was
3 that you made a discovery demand for all
4 documents from Illinois EPA and
5 correspondence related to this adjusted
6 standard petition. We objected on the basis
7 of relevance and also on the fact that this
8 was overbroad.

9 If I recall, the hearing officer
10 granted our -- denied your motion to compel
11 and the Board upheld that. But I -- the
12 reason I remember is that I was looking for a
13 finding on relevance and I don't think I got
14 that on the Board's order.

15 But, also, I would say that
16 Mr. Trzupek's expert opinion in this case,
17 the one that he's putting on today, lies
18 extremely heavily on those adjusted standard
19 proceedings. So I think that even if -- and
20 I don't think the Board ruled on the basis of
21 relevance. But even if they had, I think it
22 has now become relevant because it's part of
23 his expert witness testimony.

24 MR. HARSCH: And this is the same

1 proceeding when I've asked questions
2 regarding it during depositions your
3 co-counsel has objected to those questions
4 because of the Board's ruling. Is that not
5 true, Ms. Wheeler?

6 MS. WHEELER: Yes, it is true.

7 HEARING OFFICER HALLORAN: Well, I was
8 not privy to the deps.

9 MR. HARSCH: With those statements,
10 obviously, Mr. Trzupsek has addressed that.
11 We think that these cases are relevant. We
12 think we should have been allowed discovery,
13 been able to proceed to hearing despite the
14 ruling, despite Ms. Wheeler's objections.

15 HEARING OFFICER HALLORAN: I'm going
16 to --

17 MR. HARSCH: For clarification, I
18 don't have any problem with providing him his
19 testimony and having him testify about it.

20 MR. GRANT: I think it will help.
21 Regardless of what happened in the past, it's
22 part of the case today and we've accepted his
23 expert report as supplemental information.
24 Plus, it's going to save a lot of time doing

1 an impeachment based on prior sworn
2 testimony. That's the reason I was planning
3 on doing it.

4 HEARING OFFICER HALLORAN: I agree. I
5 do find it could be somewhat relevant. And
6 I'm looking at the Board's October 5th, 2006
7 Board order where they took a look at the
8 interlocutory appeal and it doesn't look like
9 they held a decision on relevancy, just the
10 potential or possible burdensome nature of
11 the request. So you may proceed, Mr. Grant.

12 MR. GRANT: Thank you. May I
13 approach?

14 HEARING OFFICER HALLORAN: You may.

15 (Brief pause.)

16 BY MR. GRANT:

17 Q. I think the question I had,
18 Mr. Trzupek, was that you previously worked with
19 Formel while at Air Solutions, Incorporated? In
20 other words, the way that I read your testimony on
21 this concerning working with Formel while at Air
22 Solutions, at the time of your testimony you were
23 with Huff & Huff; is that how you recall it?

24 A. I believe that is correct.

1 Q. And you were also with Huff & Huff
2 when you first worked with Packaging Personified on
3 the compliance issues?

4 A. Yes, that's accurate.

5 Q. Can you turn to -- if you look that
6 white binder there and if you can turn to
7 Complainant's Exhibit No. 9?

8 A. Okay.

9 MR. GRANT: Which, for the record, I
10 will identify it as the June 28th, 2002
11 CAAPP, that's C-A-A-P-P, permit application
12 from Packaging Personified.

13 BY MR. GRANT:

14 Q. Did you work on this permit
15 application?

16 A. Yes, I did.

17 Q. And was this the first CAAPP
18 application that had been submitted by PPI?

19 A. To my knowledge, yes.

20 Q. And when I say PPI, I mean Packaging
21 Personified.

22 And can you please turn to Exhibit
23 No. 1 right at the front of the binder?

24 A. Okay.

1 Q. And I see your name on the cover page.
2 Did you submit this application to Illinois EPA?

3 A. Yes.

4 Q. When you were first retained by
5 Packaging Personified, they were not in compliance
6 with their record keeping and permit requirements
7 for Part 18 of the Board regulations; is that
8 correct?

9 A. Record keeping and what? I'm sorry.

10 Q. And permitting?

11 A. They certainly had not submitted their
12 permit. The record keeping issue I think is a
13 matter of -- is a matter of judgment.

14 Q. Do you recall testifying at your
15 deposition?

16 A. On the record keeping issue?

17 Q. Yes.

18 A. Yeah. I know that I did testify about
19 that.

20 Q. Do you remember saying that they were
21 not in compliance with the record keeping
22 requirements at your deposition?

23 A. I don't know if I said that or not.

24 (Brief pause.)

1 BY MR. GRANT:

2 Q. Mr. Trzupek, let me ask you
3 specifically at your deposition were you asked this
4 question and did you give this answer? Question:
5 Okay, as far as you addressed their Part 218 record
6 keeping and permitting, were they in compliance with
7 the reporting requirements to Illinois EPA. Answer:
8 At that point, when I was first hired, no, they were
9 not.

10 A. In regards to reporting, yes, I
11 believe that is -- was what I said, yes.

12 Q. Reporting. Thank you.

13 A. You're welcome.

14 Q. And your first visit would have been
15 after they were first inspected in 2001; isn't that
16 true?

17 A. Yes.

18 Q. The first visit to Packaging
19 Personified?

20 A. Inspected by IEPA, yes, that is
21 correct.

22 Q. Do you know if they received a
23 violation notice from Illinois EPA at that point?

24 A. At the time of my first visit, no, I

1 do not believe that they had.

2 Q. Let me ask you to turn to your expert
3 report, and that is in --

4 MS. VILLASENOR-RODRIGUEZ: Binder two.

5 BY MR. GRANT:

6 Q. -- the black binder two, Exhibit 55.

7 A. Okay. I'm there.

8 Q. If you could look to the bottom of
9 what I have as Page 2, it's the first page of the
10 expert report.

11 A. Yes.

12 Q. In the opinion it states a
13 recirculating drying oven on press five; would that
14 also be considered a curing oven?

15 A. Gosh, I don't -- I guess in the
16 parlance of the industry I don't normally hear the
17 word curing. It's not something I'm familiar with.

18 Q. As a chemist, when a coating or ink is
19 dried, isn't there a cross-linking effect?

20 A. Sure.

21 Q. Which is also referred to as curing?

22 A. Yeah, there definitely is a
23 cross-linking effect. And I guess I hear the word
24 curing and coating in the coating industry. I don't

1 hear it in the printing industry. But I'm not
2 trying to quibble.

3 Q. I understand. And I understand
4 that -- the reason I'm asking is in our complaint we
5 called it a curing oven and it was denied there was
6 curing oven. But I think in this case you actually
7 are having a chemical curing in that drying oven;
8 isn't that true?

9 A. I guess I'm not familiar enough with
10 the chemistry of their inks to be able to say that.
11 I would assume that is true, but I don't know that
12 for a fact.

13 Q. Okay. That was just something I
14 wanted to ask about.

15 A. Sure.

16 Q. And this oven on press five is used to
17 dry off volatile organic material quickly so the
18 printing of different colors can be done at a high
19 rate of speed; isn't that purpose of the drying
20 often?

21 A. That is correct.

22 Q. And it also burns volatile organic
23 material, as well, and I'm talking specifically of
24 press five; is that correct?

1 A. That is true.

2 Q. Based on your experience in the
3 industry you understand that to be acceptable by the
4 Illinois EPA, the control of volatile organic
5 material emissions, which I'll refer to as VOM, must
6 be demonstrated, correct?

7 A. Demonstrated meaning?

8 Q. That Illinois EPA requires that if
9 there's a regulation that requires VOM control, that
10 that control be demonstrated; isn't that accurate?

11 A. I guess as a broad statement, yeah, I
12 would agree with that.

13 Q. Did you explain this to Packaging
14 Personified when you were first retained by them?

15 A. I explained to them that as we were
16 evaluating our compliance options that at some point
17 a formal compliance test, which I assume is where
18 we're going, would be necessary.

19 Q. Capture and control efficiency for the
20 solvent process at the Packaging plant were not
21 demonstrated to Illinois EPA until the stack test
22 was done on the RTO control device in 2004; isn't
23 that correct?

24 A. We didn't do a formal compliance test

1 until the RTO was installed.

2 Q. And the RTO itself -- I don't know. I
3 think at this point maybe we better define RTO. As
4 far as the RTO that was actually installed at
5 Packaging Personified's plant, what does the RTO
6 stand for?

7 A. Regenerative thermal oxidizer.

8 Q. Thank you. Anyway, the RTO, that was
9 not a dual purpose piece of equipment? What I mean
10 by that is the RTO was not designed to cure inks and
11 destroy emissions, it was really just for the
12 purpose of destroying VOM emissions; is that
13 accurate?

14 A. That is correct.

15 Q. Can I get you to turn to the CAAPP
16 application, which is our Exhibit 9, the white
17 binder, and if you can find 4.15?

18 A. Okay. Got it.

19 (Brief pause.)

20 BY MR. GRANT:

21 Q. In this section of the CAAPP
22 application, Packaging states that press five was
23 subject to -- and not just on this page, it's back
24 and forth a couple pages, too. But, essentially,

1 the section states that press five was subjected to
2 218.401 and in compliance, correct?

3 A. Yes, that is correct.

4 (Brief pause.)

5 HEARING OFFICER HALLORAN: Back on the
6 record. We just took a short break to get
7 situated. Mr. Grant, your witness.

8 BY MR. GRANT:

9 Q. My last question was that this page of
10 the CAAPP application states that -- represents that
11 press number five is in compliance. And then my
12 next question was -- oh, and then also it was
13 regulated by 218.401, correct?

14 A. Yes.

15 Q. And the method of demonstrating
16 compliance listed on this page states manufacturer's
17 guarantee, correct?

18 A. Yes.

19 Q. Illinois EPA does not accept just a
20 manufacturer's guarantee as a demonstration of
21 compliance, does it?

22 A. I don't know that either way.

23 Q. Wouldn't it require at least a
24 temporary total enclosure test plus demonstration of

1 actual destruction efficiency for VOM?

2 A. As far as proving that the destruction
3 and the capture are what we represent, that would be
4 a requirement, yes.

5 Q. Now Packaging Personified chose not to
6 perform a temporary total enclosure capture
7 efficiency test, I guess, before the 2004 test;
8 isn't that correct?

9 A. That is correct.

10 Q. But eventually it did shut down press
11 four?

12 A. Correct.

13 Q. And after press four was shut down,
14 they ran press five pretty much 24 hours a day;
15 isn't that correct?

16 A. I don't know that.

17 Q. Let me take you back to the expert
18 report, which is Packaging's Exhibit 55.

19 A. Okay.

20 HEARING OFFICER HALLORAN: Mr. Grant,
21 what are we looking at now, please?

22 MR. GRANT: This is Respondent's
23 Exhibit 55. This is Mr. Trzuppek's expert
24 report.

1 HEARING OFFICER HALLORAN: Thank you.

2 BY MR. GRANT:

3 Q. If you can look at Page 4 of 8 down at
4 the bottom?

5 A. Yes.

6 Q. You list three factors to be
7 considered for adjusted standards and you cite
8 sections of the Act and Board regulation. Just for
9 clarification, these factors that you have in your
10 report are not listed in the Act or in the Board
11 regulations you've cited, is it? In other words,
12 this is not language in the Act or the Board
13 regulations?

14 A. It is not the language, correct.

15 Q. These are your personal
16 interpretations based on your experience of the
17 adjusted standards factors, correct?

18 A. Yes. Try and put it into plain
19 English, yeah.

20 Q. Now your expert report relies on the
21 assumption that prior to installation of the RTO,
22 that press five was in compliance, correct?

23 A. That is a portion of what I said, yes.

24 Q. Even though it was never demonstrated

1 with the curing oven, correct?

2 A. And I assume what you're saying is
3 demonstrated in terms of a formal compliance test,
4 that is correct. But I believe it was demonstrated
5 in a technical sense, yes.

6 Q. But not in a form that would be
7 acceptable to Illinois EPA?

8 A. I can't say what's acceptable to EPA
9 or not.

10 Q. And when you performed your own
11 testing, you did not do three one-hour tests for
12 capture efficiency; isn't that correct?

13 A. That is correct.

14 Q. And when in 2004 Packaging Personified
15 performed the tests on the RTO, they notified
16 Illinois EPA, submitted a protocol -- testing
17 protocol for approval and invited Illinois EPA to
18 attend the testing; isn't that true?

19 A. That is correct.

20 Q. If you can turn to Page 6 of your
21 report at the top?

22 A. Okay.

23 Q. In Subsection A you claim that an
24 adjusted standard is a compliance option along with

1 control and release of water-based inks, et cetera;
2 do you see that?

3 A. Yes.

4 Q. But when you get an adjusted standard,
5 you're not complying with the regulation, you're
6 just excused from the compliance; isn't that true?

7 A. I guess if you're talking about the
8 regulation being 401, I guess that's true, yeah,
9 although I'm not a lawyer, obviously.

10 Q. Now this is, I guess, why I wanted to
11 give you the testimony from the Formel hearing just
12 because of a few of these facts. But let me ask you
13 in your testimony in the Formel hearing you stated
14 that you had been working with Formel on compliance
15 issues for about three years; do you recall that?

16 A. That sounds accurate, yes.

17 Q. So they began working on the -- on
18 solving the compliance problem in about 1997?

19 A. Yeah. They were part of a group of
20 flexographic printers who began working on it about
21 that time.

22 Q. And at least at the time of their
23 petition, which would be 2000, they had operating
24 permits for the their emission sources, correct?

1 A. I believe that's correct.

2 Q. And in your testimony at the Formel
3 hearing you estimated the annual cost of control --
4 of controlling excess VOM between \$10,000 and
5 \$20,000 per ton, correct?

6 A. That sounds right, but could you give
7 me a page?

8 Q. As a matter of fact, let me direct you
9 to there's two pages where you throw the numbers
10 out. One of them is Page 35 of your testimony, the
11 other one is at 45. I think the second one
12 involves some structural work in the plant.

13 A. Okay. Regenerative thermal, 10,911
14 for regenerative, yes.

15 Q. So between 10,000 and 20,000 is your
16 ballpark?

17 A. Yeah. That was what I testified to.

18 Q. And you came up with these estimates
19 after working on the issue for about three years,
20 correct?

21 A. I mean, it didn't take me three years
22 to come up with those estimates, obviously, but,
23 yeah, that was part of the -- part of my charge,
24 yes.

1 Q. If you could look to the CAAPP permit
2 application at Page 3.1.8?

3 A. Okay. I'm there.

4 Q. I guess before I go further, when I
5 mentioned that \$10,000 and \$20,000 number, are those
6 annual costs for control?

7 A. Yes.

8 Q. Okay. Going to Page 3.1.8 of
9 Exhibit 9, you'll see it reports -- as part of the
10 CAAPP permit application it reports VOM emissions
11 for press number four; do you see that?

12 A. Yeah. I just want to make sure I have
13 the right press.

14 Q. That's fine. Please. 3.1.1 I think
15 is where it starts.

16 A. 3.1.8 is what we're talking about,
17 because that appears to be presses one and two?

18 Q. 3.1-8.

19 A. 3.1-8, and that section, if you look
20 at 3. -- wait a minute.

21 Q. Down at the bottom I've got --

22 A. I'm sorry.

23 Q. -- 342 as the page number.

24 A. My bad. You're right. That is press

1 four, yes.

2 Q. It's difficult pagination.

3 A. I know.

4 Q. You agree that's for press four?

5 A. Yes. Absolutely.

6 Q. And do you see the maximum VOM
7 emissions reported at 51.8 tons, typical at 18.9.
8 And then going over to the right, at the time
9 seeking permit for the these emissions, that they
10 were seeking a permit level of 20.9 tons; do you see
11 that?

12 A. Yes.

13 Q. Now based on just the \$10,000 annual
14 cost of control that you looked at at the Formel
15 hearing, that would mean annual cost of control for
16 press four at \$200,000 a year just for press four,
17 correct?

18 A. I would not calculate a control cost
19 by taking something I did for Formel and multiplying
20 it by that. But, I mean, 10,000 times 20,
21 obviously, is 200,000.

22 Q. Okay. And yet in your expert report
23 you state that a used press could have been
24 purchased for only \$75,000?

1 A. A used oxidizer, yes.

2 Q. Right, a used oxidizer?

3 A. Yeah.

4 Q. Now that \$75,000, my understanding --
5 I know this is going to come up later on in the
6 hearing, but that came from Ship & Shore after the
7 fact, but it was an estimate of 2002 costs; is that
8 what your recollection of that is?

9 A. And I was not privy to those
10 conversations firsthand, but my understanding was
11 that that was considered at the time when PPI was
12 deciding what they were going to do.

13 Q. That was before they purchased the
14 RTO?

15 A. Again, I was not there and it's a long
16 time ago, but that was -- that's my recollection.

17 Q. Do you know if that \$75,000 included
18 installation and engineering costs?

19 A. I do not know.

20 Q. When Packaging purchased the RTO, it
21 spent \$250,000 on that, correct?

22 A. That is my understanding.

23 Q. And that was -- was that an installed
24 cost do you know?

1 A. I do not know.

2 Q. When they installed the press -- I'm
3 sorry, when they installed the control, that allowed
4 them the flexibility to install new flexographic
5 printing presses, correct?

6 A. Yeah. I think that's a chicken and
7 egg argument. I think the press is -- putting in
8 the press, the new eight color, was step one and
9 then the business justified putting in the RTO was
10 my understanding.

11 MR. GRANT: That's all I have.

12 HEARING OFFICER HALLORAN: Thank you,
13 Mr. Grant. Mr. Harsch.

14 MR. HARSCH: Can we go off the record
15 a second?

16 HEARING OFFICER HALLORAN: Yes. We're
17 off the record.

18 (Brief pause.)

19 HEARING OFFICER HALLORAN: Back on the
20 record.

21 CROSS EXAMINATION

22 BY MR. HARSCH:

23 Q. Mr. Trzupsek, those are annualized
24 costs of 10,000 to 20,000 that Mr. Grant has

1 directed to you in your testimony in the Formel
2 proceeding?

3 A. In regards to the Formel case, yes,
4 that is correct.

5 Q. An that would include an annualized
6 cost of the capital, as well?

7 A. I'm sorry?

8 Q. It's taking in the cost of capital --

9 A. Yes, that is correct.

10 Q. -- and annualizing it? It's not just
11 operating costs?

12 A. That is correct.

13 Q. Just to clarify it here so that I
14 don't have to come back to it, there were questions
15 regarding the oven on press five, whether it was a
16 curing oven or a drying oven. In the flexographic
17 printing arena, do you normally think of curing
18 ovens being a UV oven?

19 A. No.

20 MR. HARSCH: Thank you. No further
21 questions.

22 HEARING OFFICER HALLORAN: Thank you.

23

24

REDIRECT EXAMINATION

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BY MR. GRANT:

Q. Just out of curiosity, what usable life did you use in figuring out the annualized cost in the standards testimony? In other words, what Mr. Harsch asked about including the cost of capital, what is the useful life of the oven?

A. We actually didn't do it for Formel per the way we normally do RACT analysis. And RACT is capital R-A-C-T. We did an amortized cost over -- of capital over a ten-year period.

Q. So ten years useful life on a control device?

A. Again -- and I don't mean to quibble, Mr. Grant, but we would not say useful life. We would just say we spread the capital over those ten years.

MR. GRANT: Okay. Thanks.

HEARING OFFICER HALLORAN: Thank you.

Anything else of this witness?

MR. HARSCH: (Shaking head.)

HEARING OFFICER HALLORAN: Thank you,

Mr. Trzupek.

MS. WHEELER: Mr. Halloran, may we

1 take a two-minute break before our next
2 witness?

3 HEARING OFFICER HALLORAN: Sure.

4 We're off the record for two minutes.

5 (Whereupon, after a short
6 break was had, the
7 following proceedings
8 were held accordingly.)

9 HEARING OFFICER HALLORAN: Back on the
10 record.

11 MR. GRANT: We would like to call
12 David Bloomberg as our next witness.

13 (Witness sworn.)

14 WHEREUPON:

15 DAVID BLOOMBERG

16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GRANT:

20 Q. Good morning, Mr. Bloomberg. Can you
21 please state your name and spell it for the record?

22 A. David Bloomberg, D-A-V-I-D,
23 B-L-O-O-M-B-E-R-G.

24 Q. Where are you employed?

1 A. I work for the Illinois EPA, Bureau of
2 Air, Division of Air Pollution Control Compliance
3 Unit.

4 Q. What do your duties include?

5 A. I'm the compliance unit manager, so I
6 supervise the sending of all violation notices,
7 progression of the case as they go on such as
8 whether or not to accept the CCAs or send notice of
9 intent to pursue legal action.

10 I also supervise the engineers who
11 review stack tests, monitoring reports. Most of the
12 reports that come into the Bureau of Air, except for
13 annual emission and seasonal emission reports.

14 Q. What positions have you held with
15 Illinois EPA in the past?

16 A. I started in November of '91 working
17 for the Air Quality Planning Section. I progressed
18 up through the Environmental Protection Engineer
19 rank one, two, three, and then moved to the
20 Compliance Unit manager in 2004, I believe.

21 Q. And you mentioned Environmental
22 Protection Engineer. Are you, in fact, an engineer?

23 A. Yes, I am.

24 Q. Please turn to Exhibit 2 in the white

1 binder. I'm going to ask you if that's your resumé?

2 A. Yes, it is.

3 Q. Are you familiar with the subject
4 matter of this case?

5 A. Yes, I am.

6 Q. And the location of Packaging
7 Personified's facility?

8 A. Yes.

9 Q. During the time period between 1993
10 and 2003 was DuPage County located in the US EPA
11 designated severe ozone non-attainment area?

12 A. Yes, it was.

13 Q. From your involvement in the case, can
14 you describe the nature of Packaging Personified's
15 business?

16 A. They extrude plastic packaging,
17 flexible packaging and then print on it.

18 Q. And do they use solvent-based inks?

19 A. Yes, they do.

20 Q. Are you familiar with the Bureau of
21 Air's compliance file on Packaging Personified's
22 facility?

23 A. Yes.

24 Q. Does Packaging Personified's facility

1 contain units that emit volatile organic material?

2 A. Yes.

3 Q. Are you familiar with the regulations
4 governing VOM emissions from flexographic printers
5 in the Chicago metropolitan area?

6 A. Yes.

7 Q. Please describe how you've been
8 involved with these regulations.

9 A. While I was in the Air Quality
10 Planning Section I was in a work group that was
11 formed to address the problems that were brought to
12 us by a group of sources that use flexographic
13 printing on plastic substrates, and so I've been
14 working on that topic since before 1997 and have
15 been involved in several adjusted standards and
16 several enforcement cases for sources of that type.

17 I also am currently -- well, just
18 finished in terms of the flexographic printing rule
19 for flexible packaging. The rules are about to
20 be -- the EPA is about to submit to the Board
21 modifications pursuant to US EPA regulations, so I
22 was heavily involved in rewriting that portion of
23 the rule.

24 Q. Just to clarify, you say that you were

1 approached by printers in the 1990s about problems
2 with compliance with flexographic printing
3 standards. Did you make the effort to reach out
4 initially or did they contact Illinois EPA about
5 problems they were having?

6 A. They contacted us.

7 Q. What are the options under the
8 regulations? And specifically I'm talking about the
9 218.401 and the subsequent regulations. How does a
10 printer come into compliance with the regulations?

11 A. There are several options. The first
12 is use compliant ink. And there are actually two
13 different options for how to determine if your ink
14 is compliant.

15 The second is to use a mix of
16 compliant inks and non-compliant inks and average
17 them on a daily basis called daily-weighted
18 averaging.

19 And the third is to put an add-on
20 control device.

21 Q. If a printer chooses the third option,
22 an add-on control device, do the regulations require
23 the printer to verify capture and control efficiency
24 under that option?

1 A. Yes, they have to demonstrate
2 compliance.

3 Q. And what is required for verification
4 of compliance?

5 A. They need to follow the proper methods
6 as outlined at various places in the rules and US
7 EPA methods, they need to submit a protocol to
8 Illinois EPA, give us notice so we can attend the
9 test if we wish to, submit a report on the test
10 which we then review and, you know, all of that
11 using the proper methods ensuring it's done
12 correctly.

13 Q. Could you please turn to Complainant's
14 Exhibit 8 in the white binder?

15 MR. GRANT: For the record, this is a
16 letter from Huff & Huff dated March 31, 2003.
17 BY MR. GRANT:

18 Q. Can you take a look at that?

19 A. Okay.

20 Q. Does this letter constitute an
21 appropriate verification of control for press number
22 five?

23 A. No. Not even close.

24 Q. Why not?

1 A. It contains none of the information or
2 very little of the information -- backing
3 information that we would expect in a stack test.

4 Looking at this, I can't even tell
5 where some of these numbers come from. Especially
6 the capture efficiency, I have no idea where these
7 numbers would have come from. There was no protocol
8 submitted, to my knowledge. There was -- we were
9 not told about the test ahead of time and even the
10 first letter calls it an informal emissions test.

11 Q. Is an engineer's estimate sufficient
12 to demonstrate compliance with VOM control
13 requirements?

14 A. No.

15 Q. Are manufacturer's warranty guarantees
16 sufficient to demonstrate compliance?

17 A. No.

18 Q. Are you aware that Packaging
19 Personified installed a thermal oxidizer in late
20 2003?

21 A. Yes.

22 Q. And are you aware of the stack test
23 that was performed on what we've been calling an RTO
24 in early 2004?

1 A. Yes.

2 Q. Was this test reviewed and accepted by
3 Illinois EPA?

4 A. Yes, it was.

5 Q. Let me take you back to the '90s
6 again. In 1997 did Illinois EPA perform an outreach
7 to flexographic printers in Chicago area?

8 A. Yes.

9 Q. Can you describe what sort of -- what
10 was involved in that outreach?

11 A. Because we had several printers that
12 had come to us and said that there were problems, we
13 needed to gather information. This was not
14 something that had apparently been brought up on a
15 nationwide basis. US EPA was pretty much of no help
16 to us. And so we needed to find out was this a
17 large problem or was it a small problem, was it even
18 a problem at all for that matter.

19 So we put together a list of
20 sources that we believed were flexographic printers
21 using plastic substrates and we sent out letters
22 with information to them to try to get information
23 back to us so that we could decide on how to
24 proceed.

1 Q. Can you turn to Exhibit 4 in the white
2 binder? That's Complainant's Exhibit 4.

3 MR. GRANT: And for the record, it's a
4 letter from Illinois EPA -- purports to be a
5 letter from Illinois EPA dated July 2nd,
6 1997.

7 BY MR. GRANT:

8 Q. Mr. Bloomberg, do you recognize this
9 document?

10 A. Yes.

11 Q. Who is the letter addressed to?

12 A. Dominic Imburgia.

13 Q. Does it have a company name above
14 that?

15 A. Yes, Packaging Personified, Inc.

16 Q. And what is the address?

17 A. 246 Kehoe Boulevard, Carol Stream,
18 Illinois, 60188.

19 Q. Were letters similar to this prepared
20 for other flexographic printing companies?

21 A. Yes.

22 Q. And to your knowledge were all of
23 these letters, including Exhibit No. 4, mailed out
24 by Illinois EPA?

1 A. Yes.

2 Q. Did you get responses to these letters
3 from other flexographic printers?

4 A. Yes, we did.

5 Q. Did Packaging Personified ever call or
6 write in response to this letter?

7 A. Not to my knowledge.

8 Q. For the people who were involved, what
9 actions were taken in response to this outreach?

10 A. When you say the people, the sources?

11 Q. After you sent these letters out and
12 when people responded, what --

13 A. We formed a work group with Illinois
14 EPA and industry to try to determine how to proceed
15 from that point forward.

16 Q. Did Packaging Personified come to any
17 of these meetings?

18 A. No.

19 Q. Did any of the companies who
20 participated find a way to comply with the
21 regulations to the process?

22 A. Yes. At least one company started
23 attending meetings and then stopped attending
24 because they were able to find a method of

1 compliance.

2 Q. And did other companies file petitions
3 for adjusted standards?

4 A. Yes. Eventually, after going through,
5 you know, several steps, three companies filed
6 petitions for adjusted standards.

7 Q. Did Illinois EPA require conditions to
8 support adjusted standards?

9 A. Yes.

10 Q. And you mentioned the three companies
11 that obtained adjusted standards -- and I don't
12 think there'll be objections -- Formel Industries,
13 Bema Films and Vonco Products?

14 A. Yes.

15 Q. Have all three of these companies
16 since installed control devices?

17 A. Yes, they have.

18 Q. What is your understanding of the
19 reason that they installed control devices despite
20 having obtained an adjusted standard?

21 A. I think it's severalfold. The first
22 is that they wanted to expand their businesses, get
23 larger presses or more colors on their presses and
24 an adjusted standard only covers the equipment

1 that's in place at the time it is granted, it does
2 not cover future equipment.

3 So they needed to -- if they
4 wanted to expand their business, they needed to go
5 ahead in the full compliance route.

6 Q. How did Illinois EPA learn of the
7 alleged violation of the flexographic printing rules
8 by Packaging Personified?

9 A. I was on a phone call with a man who
10 was acting as a consultant to a number of these
11 facilities and he mentioned that Packaging
12 Personified was out there, he felt it was not fair
13 that the three companies that you just mentioned
14 were spending quite a bit of time, effort and money
15 to try to come into compliance to get the -- to then
16 also get the adjusted standards while Packaging
17 Personified was out there operating without permits,
18 operating without coming into compliance, he felt
19 that that was unfair.

20 Q. Let me shift a little bit to
21 construction and operating permits for emission
22 sources. Are you familiar with the requirements for
23 construction and operating permits in the air
24 regulations?

1 A. Yes.

2 Q. Why are these permits important to
3 Illinois EPA?

4 A. The permits are important, for one
5 thing, because they're federally required in most
6 cases. But beyond that, in order to ensure that the
7 State knows what equipment is at sources, how it's
8 being controlled, what's being emitted and whether
9 or not those emission units are complying with
10 environmental regulations.

11 That information then leads to how
12 the State can comply with its requirements -- its
13 federal requirements, the National Ambient Air
14 Quality Standards and the like.

15 Q. Similarly, are you familiar with
16 annual emission reports?

17 A. Yes.

18 Q. And why are annual emission reports
19 important to Illinois EPA?

20 A. Again, besides that they're federally
21 required, they provide information that is used both
22 on a state and national level for keeping track of
23 the emissions that go into the air. That can be
24 used for modeling purposes to determine what new

1 regulations are necessary, again, how US EPA
2 classifies the state and the area in terms of the
3 air quality standards. All of that plays into it.

4 Q. Can you just generally describe
5 Illinois EPA's ERMS, E-R-M-S, System?

6 A. ERMS, the Emissions Reduction Market
7 System is a cap and trade VOM reduction program. It
8 was created to help reduce VOM emissions in the
9 Chicagoland area which was necessary to comply with
10 federal regulations because it was a severe ozone
11 non-attainment area.

12 The program is such -- a cap and
13 trade program is such that each source receives a
14 baseline -- should receive a baseline and then an
15 allotment of allowances. In this case they're
16 called ATUs, allotment trading units.

17 The source can then emit however
18 much they need to emit, you know, pertaining to
19 their permit and other rules. It does not allow
20 them to get out of any other rules. But they emit
21 and if they go over their allotment, then they need
22 to buy allowances from the market.

23 If they stay under their
24 allotment, then they can sell allowances. ERMS ATUs

1 have a two-year life span. So if it's not used
2 within two years, it expires. And in this way it
3 puts a cap over the entire Chicago ozone
4 non-attainment area instead of going to individual
5 sources. It works as a market system.

6 Q. Just one more question. There's an
7 issue in the case about a used control device. Do
8 you know of any VOM emission sources that installed
9 used oxidizers or used control equipment?

10 A. Yes.

11 Q. And, in general, what sort of
12 experience have these companies had?

13 A. Some of them have worked, but we've
14 also encountered a number of them that have had
15 problems because you're buying -- you know, kind of
16 like buying a used car, you could be buying someone
17 else's problems.

18 We have had enforcement cases that
19 have been based because someone bought a used piece
20 of equipment and couldn't comply. And so, you know,
21 you can have problems when you're buying something
22 used like that.

23 MR. GRANT: That's all I have.

24 HEARING OFFICER HALLORAN: Thank you,

1 Mr. Grant. Mr. Harsch.

2 CROSS EXAMINATION

3 BY MR. HARSCH:

4 Q. I would like you to turn to tab eight.

5 A. I'm sorry, what.

6 Q. Tab eight.

7 A. Which book?

8 MS. VILLASENOR-RODRIGUEZ: Book one,
9 the black book.

10 BY MR. HARSCH:

11 Q. Are you familiar with this document?

12 A. Yes.

13 Q. Can you describe what the document is?

14 A. It's an e-mail from me to Ed Bakowski.

15 Ed was, at the time, the head of the Bureau of Air's
16 Field Operation Section and I was in Air Quality
17 Planning.

18 Q. And this is the request to inspect
19 that you just testified about following up from your
20 complaint?

21 A. Yes.

22 Q. And that complaint was Mike Sicliano?

23 A. Mike Sicliano, yes.

24 Q. S-I-S-L-I-A-N-O?

1 A. Actually, it's a C, not an S, the
2 second one.

3 MR. HARSCH: At this point in time,
4 Mr. Hearing Officer, I'd move for the
5 admission of Exhibit 8, which is the copy of
6 the e-mail. It was not on the list accepted
7 by the Agency.

8 MR. GRANT: No objection.

9 HEARING OFFICER HALLORAN:
10 Respondent's exhibit No. 8 is admitted, no
11 objection.

12 BY MR. HARSCH:

13 Q. And this is the request that led to
14 the inspection that occurred in October of 2001?

15 A. It occurred in 2001. I don't remember
16 the exact date, but yes.

17 Q. If I draw your attention to Exhibit 9,
18 Tab 9, which is admitted, this is the inspection
19 report, is it not?

20 A. Yes, it is.

21 Q. Of the inspection on October 5, 2001?

22 A. Yes, it is.

23 Q. It is entitled Special Request; what
24 does that mean?

1 A. It means that this inspection was not
2 on their work plan ahead of time, which is
3 determined at the beginning of the federal fiscal
4 year. It was a request that came in, in this case,
5 from me.

6 Q. You participated in a number of
7 meetings and discussions with Packaging Personified
8 following the issuance of the violation notice in
9 February of 2002; is that correct?

10 A. Yes.

11 Q. Do you recall when the Agency made the
12 decision to refer this matter to the Attorney
13 General for prosecution?

14 A. No, I don't.

15 Q. We're going to get into it in our case
16 in chief, but in response to the -- did Packaging
17 Personified file a response to the violation notice?

18 A. Yes.

19 Q. And in that response did they outline
20 what steps they were going to take to come into
21 compliance?

22 A. It's hard to recall specific details,
23 but I believe so.

24 Q. Did they, in fact, submit a CAAPP

1 application?

2 A. Yes.

3 Q. And did they go back and submit the
4 annual emissions reports that they had previously
5 not submitted after they prepared them?

6 A. I believe so, but I can't be sure
7 exactly what the time frame was.

8 Q. And did they also submit seasonal
9 emissions reduction reports for the ozone seasons
10 that had not been submitted to date?

11 A. Seasonal emissions reports, they had
12 submitted. Kind of some came and then some were
13 missed and then more came and then eventually they
14 got the other ones in.

15 Q. At the time of -- in 2002 at the time
16 the violation notice was sent, these sources were
17 not eligible for an operating permit, the only
18 permit they could obtain would either be a CAAPP
19 permit or a FESOP permit, given their level of
20 emissions?

21 A. Given their level of emissions, they
22 only could have gotten one of those. And given
23 their non-compliance, they could only have gotten a
24 CAAPP permit.

1 Q. How many notices were sent out in
2 1997?

3 A. I don't recall the exact number.

4 Q. Do you have --

5 A. I would say there were at least 20, if
6 not more.

7 Q. And how many responses did the Agency
8 get back?

9 A. I don't recall that number exactly.
10 We received quite a few responses. I can't say
11 exactly. The responses did not come directly to me.

12 Q. And how many people participated --
13 how many companies actually participated in the work
14 group?

15 A. At least four started.

16 Q. US Converting was one of those
17 companies that originally participated?

18 A. Yes.

19 Q. And they dropped out?

20 A. Yes.

21 Q. Claiming they used water-based inks?

22 A. I don't know if it was that they used
23 water-based inks, but they dropped out because they
24 found a method of compliance.

1 Q. Has the Agency ever gone back and
2 verified their compliance methodology?

3 A. I don't know one way or the other.

4 Q. You're not aware of any special
5 inspection requests or special inspections that
6 were done?

7 A. No.

8 Q. Isn't it true that a number of the
9 companies, Formel, Vonco and Bema, had various types
10 of compliance issues at the time they first met with
11 the Agency?

12 A. They were all out of compliance.

13 Q. And the Agency, in fact, worked with
14 these companies to help them achieve compliance?

15 A. We worked with them to find -- to
16 determine the best method for them to end up in
17 compliance with the rules. They did not originally
18 come into compliance, instead, they filed for
19 adjusted standards.

20 Q. Some of those companies had, in fact,
21 constructed presses or other equipment without
22 construction permits?

23 A. Yes.

24 Q. And those companies' emissions were

1 created in a major source threshold?

2 A. Some of them had potential emissions
3 greater than.

4 Q. And they did not have operating
5 permits -- federally enforceable state operating
6 permits that limited their emissions?

7 A. They had applied for CAAPP permits.

8 Q. But not when they first came forward?

9 A. I don't recall the timing.

10 Q. As part of obtaining an adjusted
11 standard, were the issuance of their subsequent --
12 these companies all got subsequent federally
13 enforceable state operating permits, did they not?

14 A. They either received CAAPPs or FESOPs.
15 I don't recall.

16 Q. And as part of issuance of the CAAPP
17 permits or the FESOP permits, did the Agency
18 actually require any of those companies that were
19 above major source threshold to go through new
20 source review?

21 A. I don't know.

22 Q. Do you recall a meeting with Packaging
23 Personified in September of 2002 where they came to
24 Springfield to discuss the violation notice?

1 A. I do recall that meeting.

2 Q. And was that meeting prior to the time
3 the Agency made a decision to refer the matter?

4 A. Yes. The timeline is such that we
5 would hold a VN meeting. The Section 31 timeline is
6 such that the decision to refer does not occur until
7 several steps later.

8 Q. Do you recall discussions with Rich
9 Trzupke and/or former counsel for Packaging
10 Personified regarding their questioning why they
11 were not eligible for either a variance or an
12 adjusted standard?

13 A. I don't recall that I had those
14 conversations. I recall that Mr. Steger, former
15 counsel, had tried to make that argument and that
16 the Agency's response was no.

17 Q. You're not aware of any instance where
18 somebody has gotten an adjusted standard before the
19 Board where the Agency has opposed it?

20 A. I don't know. There is one that I can
21 think of that was either an adjusted standard or a
22 variance, but I don't recall.

23 Q. But apart of that one outlier, it
24 doesn't normally happen, does it?

1 A. No.

2 Q. In fact, it very rarely even happens
3 in variance cases, does it?

4 A. That's correct.

5 Q. Shortly after -- is it your
6 understanding shortly after that meeting being told
7 at some point by the Agency it wouldn't support an
8 adjusted standard? Is it your understanding that
9 Packaging Personified stopped using press four as a
10 printing press?

11 A. What they told us -- my recollection
12 of having gone back and looked at my notes from that
13 meeting, is that they told us in that meeting that
14 they had stopped using press four.

15 Q. Are you aware of any follow-up
16 attempts by the Agency after the initial mailing on
17 July 2nd, 2009, for reach-out to the flexographic
18 printing industry?

19 A. July 2nd?

20 MS. VILLASENOR-RODRIGUEZ: 1997.

21 BY MR. HARSCH:

22 Q. 1997. I'm sorry.

23 A. There was -- I believe a few years
24 later there was another outreach done. It was using

1 essentially the same list, but I don't know what
2 changes might have been made to it and I've -- I
3 don't know the full extent of it. I believe that
4 phone calls were made to try to follow-up with some
5 of these sources.

6 I know that when I inquired of the
7 person who did that outreach, she did not have any
8 indication that she had ever heard back from
9 Packaging Personified even to the second round.

10 Q. If I direct your attention to what's
11 on Tab 23, a document I received from IEPA in
12 discovery, can you tell me what this? Are you
13 familiar with this document?

14 A. Yes.

15 Q. Is this the start of the reach-out
16 that you just testified to?

17 A. Yes.

18 Q. Who is Jackie Neuber?

19 A. Jackie Neuber, who is now Jackie
20 Simms, at the time I believe was working for the
21 division manager's office. She is an engineer who
22 was also part of the flexographic work group and is
23 the Bureau's small business liaison.

24 Q. And this is -- this was an e-mail back

1 to Hank Naour in response to his e-mail of May 19th?

2 A. Yes.

3 Q. Who is Hank Naour? What position did
4 he have at the time?

5 A. Hank Naour was the manager of the Air
6 Toxics Unit, which at the time was in the Air
7 Quality Planning Section. He is no longer with the
8 Agency. But he also had been part of the original
9 flexographic work group.

10 Q. And I see from his memo that the same
11 consultant had stopped by and made the same
12 complaint to him in 2003 that he made to you in
13 2001; is that correct?

14 A. That's what his e-mail said.

15 Q. And you were copied on this e-mail?

16 A. Yes.

17 Q. At this point in time is it your
18 understand that Packaging Personified had submitted
19 a CAAPP application?

20 A. I don't recall the timing.

21 Q. But this would be after the case had
22 been referred?

23 A. I don't recall the timing.

24 Q. Did you apprise Mr. Naour or Jackie

1 Neuber at the time regarding the various steps that
2 Packaging Personified had, in fact, taken and their
3 efforts at achieving compliance?

4 A. I don't recall, but I doubt it since
5 that wasn't the point of this e-mail.

6 MR. HARSCH: Mr. Hearing Officer, at
7 this time I would move for the admission of
8 Exhibit 23, the e-mail.

9 MR. GRANT: I guess I wonder if -- to
10 me, it doesn't appear to be relevant and I
11 wonder if maybe Mr. Harsch can explain why
12 it's relevant based on all of these are
13 activities after the enforcement action was
14 taken.

15 MR. HARSCH: Again, it appears that if
16 part of the Agency is suggesting moving
17 forward, part of the Agency should be aware
18 as we'll go through in our testimony that
19 Packaging Personified was in the system and
20 moving toward achieving compliance. I think
21 it's very relevant.

22 MR. GRANT: It doesn't say anything
23 about Packaging Personified -- oh, yeah, it
24 does. Okay. I withdraw my objection, if I

1 even had one.

2 HEARING OFFICER HALLORAN: I agree.

3 Respondent's Exhibit 23 is admitted.

4 BY MR. HARSCH:

5 Q. Attached to this exhibit is a list of
6 flexographic printers in the Chicagoland area. This
7 is a list that was originally developed in 1997; is
8 it not?

9 A. That's what the e-mail says, yes.

10 Q. And so these would be the people that
11 received the -- to your understanding, received the
12 July 2nd, 1997 letter?

13 A. Well, the final page says that it is
14 the final mailing list, so I wouldn't say that for
15 the first three pages of the attachment, but the
16 last page, that does appear to be what it is.

17 Q. Okay.

18 MR. HARSCH: I want to verify that the
19 entire -- what we have entirely marked is
20 submitted into evidence, Mr. Hearing Officer.

21 HEARING OFFICER HALLORAN: Right. I
22 have admitted everything in Exhibit 23 under
23 Tab 23, which comprises of five pages.

24 MR. HARSCH: Thank you.

1 BY MR. HARSCH:

2 Q. I think you testified that Packaging
3 Personified had submitted some seasonal emission
4 reports as part of what it was attempting to
5 demonstrate and correct to pass compliance and then
6 there was some missing and then they submitted some
7 more recently?

8 A. Yes.

9 Q. And those missing years -- so they
10 originally submitted it for 2000, 2001 and 2002 and
11 2003; is that your understanding?

12 A. Again, I don't remember specific
13 dates, but that sounds about right.

14 Q. And what was missing was 2003 and
15 2004?

16 A. I think so.

17 Q. Did you review those seasonal emission
18 reports?

19 A. Which ones?

20 Q. The ones that were submitted for 2000,
21 2001 and 2002?

22 A. I don't recall if I specifically did
23 or one of my employees did.

24 Q. And determining -- did the Agency

1 determine that Packaging was subject to the ERMS
2 program because their emissions were greater than
3 15 tons per year and potentially had actual
4 emissions greater than 10 tons?

5 A. We determined that they were subject
6 to ERMS due to being potentially over 25 tons per
7 year and 10 tons per season.

8 Q. Has anybody quantified at the Agency
9 how many ATUs Packaging should have purchased?

10 A. No. Since we just got the information
11 last week, we did not yet have time to put together
12 a bill for the last nine years.

13 Q. Did anybody look at the 2000, 2001 and
14 2002 submittals and determine that they should have
15 had ATUs?

16 A. We determined that they should have
17 had -- as being in the ERMS program, they should
18 have had ATUs, yes.

19 Q. And for just those three years did
20 anyone quantify the number of ATUs they should have
21 purchased?

22 A. No. We were waiting to get all of the
23 information for all of the years.

24 Q. Drawing your attention to what has

1 been marked as Exhibit 25, it's a document I
2 received from the Agency in discovery. Do you
3 recall being asked by Maureen Wozniak if anyone had,
4 in fact, notified Packaging that they needed to
5 purchase ATUs?

6 A. I don't specifically recall.

7 Q. Do you ever recall yourself notifying
8 Packaging that they needed to purchase ATUs and the
9 number of ATUs at that time period?

10 A. Seeing as I believe it was part of the
11 original violation notice, I'm sure it would have
12 been discussed at the VN meeting.

13 Q. So you're not aware of any answer to
14 the question that Yasmine Keppner had asked Maureen
15 Wozniak in this e-mail?

16 A. No.

17 Q. I would like you to look at what's
18 under Tabs 40 and 41 and 42. It's my understanding
19 that Exhibit 42, which has been introduced, is the
20 construction permit revision that was issued to
21 Packaging Personified in October of 2006 in response
22 to an application received February 14th, 2006. Do
23 I read that correctly?

24 A. I don't see mention of revision.

1 Q. Is the construction permit issued at
2 that point in time?

3 A. Yes.

4 Q. And it's for the flexographic press --
5 a new flexographic press and the RTO?

6 A. Well, what the description says is it
7 is modifications of printing material usage.

8 Q. Okay. This permit was -- this
9 construction permit was issued after the original
10 construction permit for the RTO and the new press;
11 is that correct?

12 A. I don't know.

13 MR. HARSCH: Mr. Hearing Officer, I
14 think we may have a problem in our books. We
15 seem to be short our Exhibit 26, which was
16 the --

17 MS. WHEELER: Off the record.

18 HEARING OFFICER HALLORAN: Let's go
19 off the record for a second.

20 MR. HARSCH: Thank you.

21 (Whereupon, a discussion
22 was had off the record.)

23 HEARING OFFICER HALLORAN: We're back
24 on the record.

1 BY MR. HARSCH:

2 Q. It appears that we don't have a copy
3 of the August 13th, 2003 issued construction permit,
4 which in our book should have been 26. And a copy
5 of it exists as the Complainant's Exhibit 3. Would
6 you look at that, please? That was the original --
7 that was the first construction permit that was
8 issued for the RTO, correct?

9 A. Yes.

10 Q. And what I first had you look at in
11 Exhibit 42 then would be a modification to that
12 construction permit?

13 A. Yes.

14 Q. And Exhibit 40 is the permit review
15 engineer's normal calculation sheet?

16 A. It's what it appears to be.

17 Q. And you're familiar -- generally
18 familiar with these?

19 A. Generally.

20 Q. And Exhibit 40 would be then the
21 project summary?

22 A. Forty-one?

23 Q. Forty-one? Excuse me.

24 A. Yes.

1 Q. That is prepared because it was
2 planned to go out in public notice, right?

3 A. Yes. That's what it says.

4 MR. HARSCH: These are documents that
5 I received in response to Agency discovery.
6 Mr. Hearing Officer, I would move for the
7 admission of Exhibits 40 and 41.

8 MR. GRANT: No objection.

9 HEARING OFFICER HALLORAN: Okay.
10 Respondent's Exhibits 40 and 41 admitted.

11 BY MR. HARSCH:

12 Q. Mr. Bloomberg, drawing your attention
13 to what will be marked as Tab 45, it appears to
14 be an -- it's a document I received from the Agency
15 in discovery. It's an e-mail, again, from Yasmine
16 to you and Maureen regarding Packaging Personified
17 follow-up. Does this -- do you remember getting
18 this e-mail?

19 A. I don't specifically remember it, but
20 it's here.

21 Q. And isn't this e-mail an evaluation of
22 the number of ATUs -- appear to be number of ATUs
23 that Packaging Personified, in fact, needs to
24 purchase?

1 A. No. It is the number of ATUs that
2 they reported on their seasonal emission reports.
3 That number needs to be modified due to
4 non-compliance.

5 Q. And how would that be modified?

6 A. The first year it would be multiplied
7 by 1.7 and every following year it would be
8 multiplied by 1.5.

9 Q. So it's 151 times 1.2 and --

10 A. Rounding up, yes.

11 Q. -- 190, et cetera, just straight math?

12 A. Yes.

13 Q. And it would be normal for Yasmine to,
14 in fact, do this kind of review?

15 A. Yes. Although, from the e-mail, its
16 not actually her review. All she's saying is what
17 the seasonal emission report says.

18 Q. And that's what it -- but that's what
19 you base your ATUs on?

20 A. After we review it to ensure that it
21 looks reasonable, looks good, yes.

22 Q. And you're not aware of any
23 determination by the Agency that what has been
24 reported for those three years by Packaging

1 Personified have any problems?

2 A. No.

3 Q. I think you earlier said that you
4 weren't aware that anybody had reached out to
5 Packaging to tell them at the time of the June 16th,
6 2003 e-mail response to Yasmine's questions whether
7 anybody had notified Packaging of how many ATUs that
8 would need?

9 A. No.

10 Q. Do you know if anybody has
11 communicated these numbers to Packaging?

12 A. I don't know either way.

13 MR. HARSCH: Mr. Hearing Officer, I
14 would move for the admission at this point in
15 time of this internal Agency e-mail,
16 Exhibit 45.

17 MR. GRANT: No objection.

18 MR. HARSCH: And I would move for the
19 admission of the internal Agency
20 correspondence that I'd asked the earlier
21 questions about, which is --

22 HEARING OFFICER HALLORAN:

23 Twenty-five?

24 MR. HARSCH: Yes, 25.

1 MR. GRANT: Let me take a look at it.

2 MR. HARSCH: Here.

3 MR. GRANT: No objection.

4 HEARING OFFICER HALLORAN: Thank you.

5 Respondent's Exhibit No. 45 and Respondent's

6 Exhibit No. 25 are admitted into evidence.

7 BY MR. HARSCH:

8 Q. You previously testified, I think,
9 that the Agency accepted the stack test that was
10 performed by Packaging Personified -- on behalf of
11 Packaging Personified for the RTO --

12 A. Yes.

13 Q. -- unit?

14 I draw your attention to
15 Exhibit 29. Can you tell me what this is?

16 A. That is a draft of the stack test
17 review in question performed by Kevin Mattison.

18 Q. And it's these drafts that tell you
19 that it's been approved?

20 A. I also checked with Mr. Mattison last
21 week to verify.

22 Q. Do you know if this draft was ever
23 finalized?

24 A. Our computer system indicates it

1 hasn't been, but Mr. Mattison indicates it was, so
2 it looks like there was a disconnect between that
3 and also we've switched computer systems recently so
4 it's -- in Kevin's mind it was finalized.

5 Q. But there is a chance that this is, in
6 fact, his final work product on this?

7 A. The one that he -- when I asked him
8 about it, he e-mailed me last week, did not have the
9 draft stamp on it so --

10 Q. Do you know if there are any changes
11 or differences?

12 A. I do not know. I tend to doubt it.

13 Q. Pardon me?

14 A. I tend to doubt if there were any
15 changes.

16 MR. HARSCH: Mr. Hearing Officer, I
17 would move at this point in time for the
18 admission of Exhibit 45. It is a document
19 that I received from the Agency in discovery.

20 HEARING OFFICER HALLORAN: Exhibit 45?

21 MR. HARSCH: Excuse me.

22 HEARING OFFICER HALLORAN:

23 Twenty-nine?

24 MR. HARSCH: Twenty-nine.

1 MR. GRANT: No objection.

2 HEARING OFFICER HALLORAN:

3 Respondent's Exhibit 29 is admitted.

4 BY MR. HARSCH:

5 Q. Are you aware of a recent Agency
6 action with respect to the FESOP application that
7 Richard Trzupek submitted on behalf of Packaging
8 Personified in 2006?

9 A. I'm not sure what you mean by action.

10 Q. Did the Agency request additional
11 information?

12 A. That's what I've been told.

13 MR. GRANT: I'm going to object at
14 this point because I think we're starting to
15 get outside of our case. There's nothing in
16 there about, you know, FESOP applications,
17 2006. I think maybe with Mr. Harsch can
18 explain, but I'm also concerned that there
19 are ongoing negotiations between Packaging
20 and Illinois EPA about FESOP conditions, but
21 I don't think they really relate to this
22 case.

23 MR. HARSCH: Mr. Hearing Officer, the
24 allegation is that -- in the complaint that

1 Packaging doesn't have its required operating
2 permits. And I believe this is going to be
3 the only technical witness the Agency is
4 putting on and I believe with a few more
5 questions I'll be able to show that the
6 witness has, in fact, commented on that
7 permit action and the Agency has, in fact,
8 provided correspondence to Packaging
9 regarding the status of the permit
10 application.

11 MR. GRANT: My understanding is I
12 think we only alleged violations through the
13 date of filing of the amended complaint
14 regarding operating permits.

15 HEARING OFFICER HALLORAN: I'm sorry,
16 Mr. Grant.

17 MR. GRANT: The amended complaint was
18 filed in 2005 and I think that the only thing
19 that's alleged in the complaint is to the
20 date of filing this amended complaint. So I
21 just think -- I mean, I'm not aware. There
22 may be -- the Agency and Packaging may have
23 discussions about the conditions of an
24 operating permit.

1 But as far as our allegations
2 regarding their failure to have an operating
3 permit, they only went through 2005. So I'm
4 concerned for two reasons. One of them is,
5 basically, I know -- I don't want this
6 enforcement case to be used for negotiating
7 FESOP condition terms in 2009. It's just way
8 outside. That's my concerns.

9 HEARING OFFICER HALLORAN: Mr. Harsch.

10 MR. HARSCH: It clearly is relevant to
11 Packaging Personified's efforts in achieving
12 compliance and obtaining required permits.

13 HEARING OFFICER HALLORAN: A good
14 faith type of --

15 MR. HARSCH: Yes.

16 HEARING OFFICER HALLORAN: You stated
17 in a few questions we'll wrap it up.

18 MR. HARSCH: Sure.

19 HEARING OFFICER HALLORAN: What's your
20 definition of a few?

21 MR. HARSCH: Four or five.

22 HEARING OFFICER HALLORAN: Four of
23 five, okay. Objection is overruled.

24

1 BY MR. HARSCH:

2 Q. Are you familiar -- drawing your
3 attention to Exhibit 48 48, are you familiar with
4 this request for additional information that was
5 submitted?

6 A. I have not seen it until just now.

7 Q. Did you have discussions with the
8 permit review engineer regarding the issuance of a
9 FESOP permit to Packaging Personified this year?

10 A. This says that the permit review
11 engineer is David Hulskotter, no.

12 MR. HARSCH: Since he's testified he
13 hasn't had those discussions, Mr. Hearing
14 Officer, we'll move on to another subject.

15 HEARING OFFICER HALLORAN: Okay.

16 Thank you, Mr. Harsch.

17 BY MR. HARSCH:

18 Q. Did you provide information to
19 Mr. Styzens in the preparation of the economic
20 benefit calculations that he performed?

21 A. Yes.

22 Q. And what did you provide to
23 Mr. Styzens?

24 A. I don't recall exactly what

1 information I provided. I know that I met with him
2 at least once or twice to discuss the cost of
3 control for other similar sources and to determine
4 if the costs that was being presented by Packaging
5 fell into that area, was reasonable.

6 Q. And do you recall providing him
7 specific capital costs?

8 A. I may have. I don't recall
9 specifically.

10 Q. Do you recall what sources that you
11 provided that capital costs for?

12 A. Well, I don't recall providing it
13 so...

14 Q. Do you recall providing any operating
15 cost figures?

16 A. We discussed operating cost figures.
17 I recall we discussed it, that's about it.

18 Q. So you don't have any recollection as
19 to what specific companies that would have been for?

20 A. My best recollection is that it was
21 probably Formel, but I cannot guarantee that.

22 Q. And where did you obtain those cost
23 figures, if it was Formel, if you recall?

24 A. I don't specifically recall.

1 Q. Does the Agency -- is it normal for a
2 source to report capital costs and annual operating
3 costs to the Agency?

4 A. I'm not sure what normal would be. In
5 this case, because we were working with them and
6 they had to prove to us that they used an adjusted
7 standard and also since they were being enforced on
8 by US EPA for violating the same regulations, even
9 though we were agreeing with the adjusted standard,
10 you know, that information came into play.

11 Q. So that information would have been
12 provided as part of the adjusted standard, not in
13 the normal annual emissions report or seasonal
14 emission reports or permit applications?

15 A. Correct.

16 Q. Apart from the adjusted standard
17 proceeding, it's not the normal practice?

18 A. No.

19 MR. HARSCH: I need one moment to
20 confer, then I may wrap it up.

21 HEARING OFFICER HALLORAN: Okay. We
22 can go off the record for a second.

23

24

1 (Whereupon, after a short
2 break was had, the
3 following proceedings
4 were held accordingly.)

5 HEARING OFFICER HALLORAN: We're back
6 on the record.

7 BY MR. HARSCH:

8 Q. In response to Mr. Grant's questions
9 you indicated that you were familiar with the
10 correspondence from Rich Trzupsek to Mr. Grant where
11 he transmitted the engineering tests as you call it
12 or as he calls it; is that correct?

13 A. I've seen it, yes.

14 Q. Are you aware of any formal or
15 informal communication by the Agency to Mr. Trzupsek
16 or to Packaging Personified regarding problems with
17 that engineering evaluation?

18 A. I'm not aware of any.

19 Q. I believe you testified that part of
20 the requirements for doing a test are to provide
21 advanced notice to the Agency; is that correct?

22 A. Yes.

23 Q. And also the opportunity to review a
24 protocol?

1 A. Yes.

2 Q. I'm familiar with that being a
3 condition in construction permits where the source
4 has constructed an emission source or control
5 equipment and the Agency then says it's a permit
6 condition you have to make those kinds of advanced
7 notice protocol, et cetera. And, in fact, if I look
8 at what's been accepted as Complainant's Exhibit 3
9 on Page 3 of that permit, I believe it specifies
10 those kinds of conditions. Is that normally
11 required?

12 A. It is usually put in construction
13 permits as a reminder.

14 Q. Is there a separate regulation
15 anywhere you can cite?

16 A. Off the top of my head, I don't know
17 the specific regulation.

18 Q. Do you know if the permit section, in
19 approving permits, always requires stack test
20 advanced notice protocols when the Agency is
21 witnessing a stack test in the various conditions
22 that you've outlined?

23 A. I can never say always.

24 Q. Apart from the requirement to

1 demonstrate compliance with a new source such as
2 what was constructed for the RTO and the new press,
3 is it that -- do you know if the permit section
4 accepts the stack test results for those that have
5 been stack tests performed without providing such
6 notice?

7 A. I think I got lost in your question
8 somewhere.

9 Q. If the applicant for a permit, for an
10 operating permit, for example, submits a stack test
11 that they performed and submits the test results to
12 the Agency as part of the permit application or
13 compliance determination, if the Agency accepts that
14 test after reviewing it, isn't it the permit
15 section's normal course to issue the permit?

16 A. I think the key there is if the Agency
17 accepts that test. So it would come -- the test
18 would come to our section, the compliance section,
19 and then we would review it to determine whether or
20 not it should be accepted.

21 Q. But it's not -- I'm not aware of any
22 regulatory requirement. I've been practicing a long
23 time helping people get construction permits and
24 operating permits for a long time. I'm not aware of

1 any regulatory requirement that you have to give
2 advanced notice or opportunity to review the test
3 protocol or even have the Agency present.

4 Doesn't the source sort of operate
5 on its own risk when it does a test and submits it
6 to the Agency, like I've described, to demonstrate
7 compliance for an existing source?

8 A. I guess I'm not sure of the question.
9 Does it operate as its own risk?

10 Q. I mean, if you do the test and you
11 make -- the Agency doesn't accept it, they're going
12 to tell you you've got to go redo it; that's what I
13 mean.

14 A. Certainly, that can happen with any
15 test that's done.

16 Q. Do you remember testifying during your
17 deposition that you're not aware of any
18 determination by the -- one way or the other of the
19 Agency accepting or rejecting engineering tests such
20 as performed by Mr. Trzupsek on press five for
21 issuing operating permits?

22 A. In general or specifically in this
23 case?

24 Q. Yes, in general.

1 MR. GRANT: I think the question is
2 whether he recalls making that statement in
3 the deposition?

4 MR. HARSCH: Yes.

5 BY THE WITNESS:

6 A. I don't recall that statement in
7 particular.

8 BY MR. HARSCH:

9 Q. Let me draw your attention to what's
10 been marked as Tab 22. Can you tell me what that
11 document is that I received from the Agency in
12 discovery?

13 A. These are notes from -- one page of
14 notes from looks like the meeting with Packaging
15 Personified and the Attorney General's Office from
16 April 20th of '03.

17 Q. Are those your notes?

18 A. No.

19 Q. I think we cleared up in the
20 deposition all of the items that were submitted by
21 Packaging beginning in 2002, the AARs, the seasonal
22 emission reports, et cetera, you were shown as
23 getting copies or upon receipt when they were
24 transmitted internally at the Agency by Ms. Wozniak

1 you were copied; is that correct?

2 A. I think so.

3 Q. So those documents were always
4 available to you as they came in?

5 A. Safe to say.

6 Q. So since you couldn't remember
7 earlier, it just -- they were submitted to you?

8 A. In the normal course of the way the
9 Agency does business, they should have been.

10 (Brief pause.)

11 HEARING OFFICER HALLORAN: Let's go
12 off the record.

13 (Whereupon, after a short
14 break was had, the
15 following proceedings
16 were held accordingly.)

17 HEARING OFFICER HALLORAN: We're back
18 on the record.

19 BY MR. HARSCH:

20 Q. Mr. Bloomberg, are you aware of any
21 instances where a flexographic printer using a
22 recirculating press have demonstrated compliance
23 with Section 218 through the destruction that occurs
24 when you operate the press in a recirculating

1 manner?

2 A. No.

3 Q. Are you aware of any failed attempts
4 to demonstrate such compliance?

5 A. As far as I recall, this is the only
6 time I've heard of it being used in our area.

7 Q. Do you know if Vonco, Formel and Bema
8 are direct competitors of Packaging Personified?

9 A. I don't know.

10 Q. Is my understanding correct that you
11 testified that those three companies obtained an
12 adjusted standard from the Pollution Control Board
13 with the Agency's assistance and that adjusted
14 standard allowed them not to have to put in a
15 control?

16 A. They each received an adjusted
17 standard that they did not have to put in a control
18 unless the situation changed such that it became
19 more feasible.

20 Q. And the basis of that feasibility was
21 the installation of a new press, increased emissions
22 and they could then pay for the control device?

23 A. No. It was not limited. It was based
24 on they had to do a certain number of tests per year

1 to try to find compliant inks and -- you know, or if
2 the economics of the situation changed, there were a
3 number of possibilities when they could and there
4 were -- like I said, there were requirements that
5 they had to do ongoing research, yes.

6 Q. And do you know the approximate dates
7 of when those companies installed -- actually,
8 economics changed and they applied for construction
9 permits to put in a new press and control devices?

10 A. I don't. I know that all of them have
11 had controls for several years now.

12 Q. About the same time as Packaging
13 installed in 2003 and 2004 their new press and
14 control device, if you know?

15 A. I just don't recall the dates
16 specifically enough.

17 Q. Would it be in that time frame?

18 A. Plus or minus three years probably.

19 Q. Do you recall how long after an
20 adjusted standard was granted?

21 A. How long?

22 Q. After the adjusted standard was
23 granted that they put in for construction permits?

24 A. I don't recall specifics and they did

1 not all do it at the same time.

2 Q. Okay.

3 MR. HARSCH: I have no further
4 questions.

5 HEARING OFFICER HALLORAN: Thank you,
6 Mr. Harsch. Mr. Grant, redirect.

7 MR. GRANT: Yeah, a couple.

8 REDIRECT EXAMINATION

9 BY MR. GRANT:

10 Q. Mr. Harsch asked about a meeting where
11 Mr. Trzupsek and/or the former counsel discussed an
12 adjusted standard for Packaging Personified; do you
13 recall that?

14 A. I don't know if it was a meeting or
15 just calls and letters.

16 Q. Were they asking for a retroactive
17 adjusted standard?

18 A. Yes.

19 Q. So essentially wipe out the
20 violations?

21 A. Yes.

22 Q. Does Illinois EPA ever support
23 retroactive adjusted standards?

24 A. None that I have ever been involved

1 in.

2 Q. And I think you also testified that
3 despite the granted adjusted standard, that US EPA
4 continued an enforcement action against Formel?

5 A. Yes, they did.

6 Q. If you can turn to the white book,
7 Exhibit 8, it's the letter?

8 A. Okay.

9 Q. This is a letter Mr. Harsch asked you
10 about and I had used this on my direct. But the
11 letter isn't addressed to anybody at Illinois EPA,
12 is it?

13 A. No.

14 Q. In facts, it's addressed to me at the
15 Attorney General's Office?

16 A. Yes.

17 Q. On the second page you are copied on
18 it, however, right?

19 A. Yes.

20 Q. Does this letter request that Illinois
21 EPA take any action either approving or disapproving
22 a specific test procedure?

23 A. No.

24 Q. And on the first page essentially this

1 is described as an informal emissions test in the
2 first sentence, isn't it?

3 A. Yes.

4 MR. GRANT: That's all.

5 RE-CROSS EXAMINATION

6 BY MR. HARSCH:

7 Q. I'm confused by your answer and maybe
8 by the question. At the time these three companies
9 Formel, Bema and Vonco, they first filed variance
10 requests before the Board, did they not, and then --

11 A. I don't think they ever filed a
12 variance. I think we discussed variances, but I
13 could be mistaken about that.

14 Q. Are you sure the variances weren't
15 filed and then --

16 A. I'm not sure.

17 Q. -- and then subsequently adjusted
18 standard petitions filed and then the variances
19 withdrawn?

20 A. I'm not sure.

21 Q. Okay.

22 A. I know that there was a discussion of
23 variances and then it was determined that they
24 believed they would -- they believed they would need

1 the relief permanently or at least for longer than
2 the variance period would allow.

3 Q. At the time the adjusted standard
4 petitions were filed, wasn't the rule effective?

5 A. Yes.

6 Q. And the companies hadn't been in
7 compliance with the rule since its effective date?

8 A. Since they became subject to it, yes.

9 Q. And the Board approved those adjusted
10 standards on January 18th of 2001. I'm looking at
11 the date on our exhibits, which are Exhibits 5, 6
12 and 7, which have been admitted.

13 A. Okay.

14 Q. So when you said that the Board
15 doesn't grant retroactive adjusted standards, what
16 were you referring to?

17 MR. GRANT: I think that he said was
18 Illinois -- my question was Illinois EPA, not
19 the Board.

20 HEARING OFFICER HALLORAN: Mr. Grant,
21 can you keep your voice up.

22 MR. GRANT: I'm sorry. My question
23 was does Illinois EPA support a retroactive
24 adjusted standard, not the Board itself.

1 Because there is a standard the Board has
2 their own rules about it, but I was asking
3 about Illinois EPA.

4 BY THE WITNESS:

5 A. A retroactive would have eliminated
6 the non-compliance from the time period prior to the
7 adjusted standard being granted. These decisions
8 did not eliminate that prior non-compliance, it
9 simply recognized for going into the future. So
10 then it was left as a matter to determine what
11 should be done about that prior non-compliance.
12 And, as I noted, US EPA enforced against Formel for
13 it.

14 BY MR. HARSCH:

15 Q. One of the companies, one out of
16 three?

17 A. Yes.

18 Q. And essentially Packaging Personified
19 was raising the issue that we should be entitled to
20 the same kind of relief, namely an adjusted standard
21 that Formel, Vonco and Bema had gotten; is that not
22 correct?

23 A. I can't say what was going through
24 their minds. I know that they asked for

1 retroactive.

2 MR. HARSCH: Okay. Nothing further.

3 HEARING OFFICER HALLORAN: Thank you.

4 Mr. Grant.

5 MR. GRANT: That's it.

6 HEARING OFFICER HALLORAN:

7 Mr. Bloomberg, you may step down. Thank you.

8 Let's go off the record for a second.

9 (Whereupon, a discussion
10 was had off the record.)

11 HEARING OFFICER HALLORAN: Back on the
12 record. We've decided we're going to take a
13 lunch right now. It's 11:35. We'll resume
14 at 12:35, 12:38. Thank you.

15 (Whereupon, after a lunch
16 break was had, the
17 following proceedings
18 were held accordingly.)

19 HEARING OFFICER HALLORAN: We're back
20 on the record. It's approximately 12:40.
21 Thank you for being prompt. We're back from
22 lunch.

23 The complainant is still in its
24 case in chief and I believe they're ready to

1 call their next witness.

2 MS. WHEELER: The People would call
3 Gary Styzens, Mr. Halloran.

4 (Witness sworn.)

5 WHEREUPON:

6 GARY STYZENS

7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. WHEELER:

11 Q. State your name, please, and spell it?

12 A. It's Gary Styzens, S-T-Y, Z as in
13 zebra, E-N-S.

14 Q. Where are you currently employed,
15 Mr. Styzens?

16 A. With the Illinois Environmental
17 Protection Agency.

18 Q. How long have you been employed there?

19 A. Since about 1990.

20 Q. What's your current position there?

21 A. I'm the Agency's economic benefit
22 analyst and manager and a general financial analyst,
23 as well.

24 Q. Mr. Styzens, aside from your salary as

1 economic benefit analyst with the State of Illinois,
2 are you being provided with any other additional
3 financial compensation for your testimony here
4 today?

5 A. No.

6 Q. Directing your attention to your
7 educational background, can you tell us a little bit
8 about it, beginning with your undergraduate degree?

9 A. Yes. I went to Southern Illinois
10 University at Carbondale from 1976 to 1980. I got a
11 bachelor's degree in forestry and environmental
12 sciences. And for much of that undergrad degree I
13 took many business electives like accounting and
14 finance and economics.

15 And then in between my undergrad
16 degree and my graduate degree, a master's in
17 business administration, I picked up a core set of
18 business courses in order to qualify. Since I had a
19 science degree, in order to qualify for the MBA
20 program at SIU-Carbondale, I had to pick up a group
21 of about ten core business courses. They're like
22 300 and 400 level junior/senior type business
23 courses ranging in all the different specialties,
24 economics, finance, accounting, management.

1 And then once I picked up those
2 core courses, then I entered the MBA program around
3 1981 and then proceeded to obtain a master's in
4 business administration in around, I think, 1983.

5 Q. Did you have any other postgraduate
6 degrees other than the MBA?

7 A. I did study for the certified internal
8 auditor exam that I received in 1988. Similar to
9 the certified public accountant type of examination,
10 the CPA exam.

11 Q. What's it aimed towards?

12 A. It certifies you as a professional
13 internal auditor, basically.

14 Q. Mr. Styzens, directing your attention
15 to the exhibit book in front of you, Complainant's
16 Exhibit No. 10, is a resumé attached to that exhibit
17 of yours?

18 A. Yes.

19 Q. Regarding your current position with
20 the Illinois EPA as an economic benefit analyst
21 manager, what do your current duties include?

22 A. Basically, I work with the Agency and
23 the Attorney General's Office, the IEPA. I get
24 referrals from the chief legal counsel through the

1 Attorney General's Office to provide assistance on
2 economic benefit analysis cases.

3 Q. Are you familiar with the concept of
4 the economic benefit of non-compliance in an
5 environmental context?

6 A. Yes.

7 Q. What does that mean?

8 A. Well, economic benefit is a type of
9 financial analysis that the US EPA developed based
10 on basic financial principles. It's the cornerstone
11 of the US EPA enforcement program.

12 It's designed to identify delayed
13 and avoided expenditures for pollution control in
14 instances where organizations are not in compliance
15 with environmental regulations and it attempts to
16 identify any financial advantages that a company may
17 gain by not investing in compliance with
18 environmental regulations.

19 Instead, they invest in expanding
20 their business into other areas, buying other
21 equipment, buying other facilities instead of
22 investing that money into pollution control.

23 One of the goals of an economic
24 benefit analysis is to level the financial playing

1 field, not only with the corporation's competitors
2 but also what the Federal Register refers to as
3 similarly situated regulatory permittees or
4 regulatory institutions, companies.

5 You know, whether you're
6 controlling pollution for inks or solvents, I mean,
7 the economic benefit analysis applies to all those
8 type of companies.

9 Q. Have you provided expert opinion
10 testimony on economic benefit of non-compliance at
11 enforcement cases before the Illinois Pollution
12 Control Board before?

13 A. Yes.

14 Q. In which pollution control enforcement
15 cases have you testified?

16 A. I think there's been about four or
17 five cases. Pan Handle Pipeline is one of the first
18 ones I did I think around 2000, 2001. New Landing
19 Utilities before the Circuit Court. Toyal was
20 another one I recently did. There's ESG Watts was a
21 case I worked on. And I think there's one or two
22 others that I have testified on.

23 Q. Have you acted as an expert opinion
24 witness in environmental matters on behalf of the

1 People of the State of Illinois other than before
2 the Pollution Control Board?

3 A. One time before the Circuit Court in
4 the New Landing Utilities case.

5 Q. And has your testimony in those
6 matters before the Board and before the courts been
7 always related to economic benefit of
8 non-compliance?

9 A. Yes.

10 MS. WHEELER: Can we go off the record
11 for just a moment, Mr. Halloran?

12 HEARING OFFICER HALLORAN: Yes, we
13 may.

14 (Whereupon, a discussion
15 was had off the record.)

16 HEARING OFFICER HALLORAN: Back on the
17 record.

18 MS. WHEELER: At this time the People
19 of the State of Illinois and the Respondent,
20 as represented by Mr. Harsch, wish to agree
21 that Mr. Styzens is an expert in economic
22 benefit analysis as is we will stipulate for
23 their expert when he is put on the stand. I
24 think that's Mr. McClure?

1 MS. VILLASENOR-RODRIGUEZ: Yes.

2 HEARING OFFICER HALLORAN: Okay. So
3 noted. Thank you.

4 MS. WHEELER: Thank you.

5 BY MS. WHEELER:

6 Q. How do you conduct an economic benefit
7 analysis, Mr. Styzens?

8 A. Well, I get referrals for economic
9 benefit assistance from our chief legal counsel at
10 IEPA through the Attorney General's Office. And
11 once I get a referral for a case, I begin to meet
12 with the Attorney General attorneys and the IEPA
13 attorneys and begin to gathering information
14 frequently from the attorneys on the non-compliance
15 period and then I begin to examine the delayed and
16 avoided expenditures that are associated with the
17 non-compliance issue.

18 Q. Just a quick aside, Mr. Styzens, did I
19 ask you if that resumé was current and reflects your
20 work experience?

21 A. It does.

22 Q. Okay. When you're asked to provide an
23 economic benefit analysis, are you usually given a
24 set of parameters or assumptions to work from?

1 A. Well, I'm not really given a set of
2 assumptions. The initial bits of financial
3 information are information that I need to obtain.
4 I frequently get the non-compliance period from the
5 attorneys and then we immediately begin the
6 discussions about identifying the delayed and
7 avoided expenditures associated with the pollution
8 control system that we're working with.

9 Q. And in your analysis do you employ the
10 concept of the time value of money?

11 A. Yes.

12 Q. Can you briefly explain to us here
13 what that is?

14 A. Basically, it's just a basic financial
15 principle where money has value over time because
16 you can make investments in money and earn interest.
17 So it's just recognizing that if you have money, you
18 can invest it and earn money on top of the
19 principal.

20 Q. Since you've been employed with
21 Illinois EPA have you read any literature related to
22 concept of economic benefit?

23 A. Yes. I've been an economic benefit
24 analyst for ten years now, so I have been exposed to

1 the large amounts of discussions of economic benefit
2 by the US EPA, their federal guidance. Also, of
3 course, there's quite a few cases that have been
4 litigated in the United States that I've examined
5 and various professional articles that are written
6 on the topic and things of that nature.

7 Q. Mr. Styzens, have you prepared an
8 economic benefit analysis for this case --

9 A. Yes.

10 Q. -- with Packaging Personified,
11 Incorporated?

12 Again, referring to People's
13 Exhibit No. 10, that is your analysis in this case?

14 A. Yes.

15 Q. Okay. And what was concluded in your
16 report? What is your report and what are the
17 attachments?

18 A. The report dated November 21st, 2008,
19 provides an overview of the non-compliance period,
20 January 1, '97, through December 5th of '03. And
21 then identifies the total economic benefit estimate
22 of \$711,274 which spans that seven years of
23 non-compliance.

24 Q. Okay. And after you performed your

1 analysis, that's when you formed -- and you
2 performed it, that's when you formed an opinion
3 estimating the economic benefit of non-compliance
4 which accrued to Packaging from their delayed and
5 avoided costs and that's that 711,274 figure?

6 A. Yes. The \$711,000 figure is made up
7 of two sets of costs, the economic benefit
8 associated with delaying expenditures and the
9 economic benefit related to avoiding expenditures on
10 pollution compliance.

11 And those two figures, 88,404 for
12 delayed costs and 622,870 for avoided costs add up
13 to the total estimate of economic benefit, which is
14 seven 711,274.

15 Q. Can you describe the method you used
16 in performing the analysis?

17 A. Basically, you're using basic
18 financial principles. And this particular approach
19 I developed when I litigated the Pan Handle Pipeline
20 case. And it basically is just a way to examine the
21 financial impacts of delaying and avoided capital
22 expenditures for a certain period of time.

23 Q. Does this method -- is this method
24 generally accepted in the area of calculating

1 economic benefit of non-compliance?

2 A. I used it in several cases. And,
3 again, it uses really basic financial principles of
4 time value of money, incremental cost analysis and
5 things of that nature, inflation, tax implications.
6 So, yes, it is basically a standard financial
7 analysis approach.

8 Q. And when you've used this concept or
9 this analysis in the Board cases you've already
10 testified about and the one court case, was it
11 accepted by the court and by the Board in those
12 cases?

13 A. Yes, as far as I know.

14 Q. What is the difference between avoided
15 and delayed costs in your analysis?

16 A. Well, usually, the delayed cost deals
17 with the purchase of equipment -- of pollution
18 control equipment, the system itself. And,
19 eventually, the non-compliant entity does spend the
20 money to buy the equipment in an attempt to come
21 into compliance, so that's why it's termed it's just
22 a delay in expenditure because eventually it is
23 spent.

24 Now the avoided costs, those are a

1 little different because that's where you're looking
2 at both the initial outlay every -- it's usually an
3 annual cost, and you're looking at both principal
4 and interest on the avoided costs because those
5 costs, which are usually annual recurring costs like
6 insurance and maintenance and electricity and
7 utilities and things that recur year after year,
8 those costs are actually avoided during those years
9 that the system was not in place. They'll never be
10 spent, so that's why you're capturing the total
11 amount.

12 Q. And is it included in those expenses
13 of avoided costs, operation and maintenance for
14 those years?

15 A. Yes.

16 Q. Directing your attention to Page 3 of
17 your analysis, the first three pages of your written
18 analysis, you have two totals, one for delayed and
19 one for avoided costs; is that right?

20 A. Yes.

21 Q. And I know you've already testified to
22 this, but just to make sure and based on this page
23 in your report the total of these two costs of the
24 delayed and the avoided combined is the total

1 economic benefit accruing to Packaging as of the
2 time of December 31st of 2008?

3 A. Yes. It's through December 31st,
4 2008. So if you kept bringing it forward to today,
5 it would be slightly higher than that.

6 Q. Because of the interest?

7 A. Because of basic interest earnings on
8 the expenditures.

9 Q. For the delayed costs in your report,
10 what is the main expenditures that was delayed in
11 this case?

12 A. The delayed expenditure related to --
13 I was provided from Packaging Personified through
14 the attorneys, the EPA attorneys, an invoice for an
15 RTO. What they put on the invoice was it's from a
16 Ship & Shore Company out of California and the
17 invoice dated in January of '03 indicated it was a
18 pollution control system and then it referred to an
19 RTO and it was a total of \$250,000 back in January
20 of '03.

21 Q. Okay. You actually saw this invoice?

22 A. Yes.

23 Q. You said it was for \$250,000?

24 A. Yes. Yeah, it was, 250,000, yes.

1 Q. What was the time period that you used
2 for the non-compliance for Packaging?

3 A. I used a time period that was provided
4 to me by the EPA and Attorney General attorneys of
5 January 1, 1997, through December 5th of 2003.

6 Q. Okay. And in your analysis,
7 December 5th, 2003, would be time they came into
8 compliance essentially?

9 A. That was my understanding, right
10 around that period of time.

11 Q. Again, on Page 3 of your analysis you
12 list \$71,705 as the benefit from the delayed
13 expenditure of the \$250,000. How did you arrive at
14 that figure and is that illustrated in your report
15 under your calculations section?

16 A. I'm sorry, could you repeat that?

17 Q. How did you arrive at that 71,700
18 figure and is that illustrated in your report under
19 the calculations section?

20 A. Yes. I basically examined the
21 financial impact of delaying the expenditure of
22 250,000 through the non-compliance period and
23 examined the -- on Excel spreadsheets there is an
24 examination of financial impact of that delay as far

1 as Packaging Personified being able to earn interest
2 on that money and also examined inflation and tax
3 implications and things of that nature.

4 Q. Let's turn to Page 1 of your
5 calculations, Mr. Styzens. If you look at Column F,
6 that's referred to as initial capital investment, at
7 the bottom, cell 17F says \$250,000. What do the
8 cells above that represent?

9 A. Okay. The \$250,000, again, is the
10 Packaging Personified invoice from Ship & Shore out
11 of California for the RTO pollution control device.
12 And what that does in column F there is it's using
13 an inflation index called the Plant Cost Index and
14 it's taking that 2003 value of 250,000 and bringing
15 it back through time to the beginning of the
16 non-compliance period in 1997 and adjusting it
17 slightly for inflation that occurred during that
18 period.

19 Q. Is that Plant Cost Index attached to
20 your report also?

21 A. There is information on that. It's
22 taken from the Chemical Engineering Magazine which
23 is available at IEPA library.

24 Q. And when it says plant costs, what

1 kind of plants is it referencing?

2 A. It's related to -- it's similar to the
3 Consumer Price Index, which is a basket of consumer
4 goods, except the Plant Cost Index is a basket of
5 industrial goods. It relates to industrial labor,
6 utilities, things that you would typically find in
7 an application of installing a pollution control
8 device.

9 Q. Again, referencing Page 1 of your
10 calculations, which is titled Economic Benefit of
11 Non-Compliance on Initial Investment/Delayed Cost,
12 Column G is titled Bank Prime loan Rate and it has
13 different figures through each year. Where did you
14 get that?

15 A. That is a general financial interest
16 rate that's put out by the Federal Reserve Board.
17 And what that is used for is a benchmark or an
18 estimate of the weighted average cost of capital or
19 the time value of money type of indicator.

20 Q. Okay. And so that's not a figure that
21 you calculated, it's a figure that you got from
22 the --

23 A. It's a federally related type of
24 financial rate.

1 Q. Okay. And then Column H talks about
2 the economic benefit before depreciation or taxes.
3 Is that some part of Column F and Column G together?

4 A. Yes. As you're moving from left to
5 right on that particular spreadsheet you're making
6 the initial adjustments for the inflation. And then
7 as you go across, you're then making adjustments for
8 tax-related issues, tax brakes related to
9 depreciation of equipment and income tax rates in
10 general. You're making adjustments for the tax
11 implications because expenditures for environmental
12 equipment are tax exempt.

13 Q. And Columns I, J and K concern
14 depreciation that take into account?

15 A. Yeah. That's an accelerated
16 depreciation approach that again, the purpose of
17 which is to make the tax adjustments that a
18 corporation -- any corporation would have gained by
19 purchasing the RTO for the 250,000.

20 Q. The tax rate that you have listed here
21 is the marginal income tax rate in Column L. Why
22 did you use that particular one?

23 A. That was -- once in a while I work
24 with Dr. John DeSarr (phonetic). He's the retired

1 U of I accounting professor, a CPA. And we had
2 worked on, like, Pan Handle together and he
3 frequently does corporate taxes in Illinois and he
4 indicated to me that that was a good benchmark or a
5 reasonable average as the amount of corporate taxes
6 in Illinois.

7 Q. And then Column M is the tax benefit
8 from depreciation. And then Column N is the net
9 benefit, and that is a net benefit for each year?

10 A. Correct. It's a net -- the
11 inflation-adjusted net after tax benefit for each
12 year.

13 Q. And when you total those years, that
14 is your benefit for avoided costs; is that right?

15 A. Correct. \$71,705 for the seven-year
16 period.

17 Q. Okay. And why did you use the bank
18 loan rate on this?

19 A. Well, since the non-compliance period
20 was so large, it was seven years, in order to -- I
21 preferably would have developed a weighted average
22 cost of capital for this specific company, but I did
23 not have seven years of financial statements that
24 would allow me to do that.

1 And from my experience over
2 ten years I've identified that by using the prime
3 loan rate, it really is a good benchmark, a
4 conservative estimate of what the cost of capital
5 would be for a corporation. Because the bank prime
6 loan rate is only given -- that rate that's given to
7 companies by banks is only given to the most
8 financially secure, the cream of the crop, they get
9 this best rate so. That's why it's a conservative,
10 reasonable rate to use as a benchmark.

11 Q. So you were giving them the benefit of
12 the doubt that they had the best credit history?

13 A. Yes.

14 Q. And did you have any years of
15 financial statements from Packaging?

16 A. I think there might have been a couple
17 years in there, but nothing sufficient to develop a
18 weighted average cost of capital.

19 Q. And when you do your economic benefit,
20 if at all possible, do you use the weighted average
21 cost of capital?

22 A. Yes.

23 Q. On Page 2 of your calculations,
24 Mr. Styzens, can you tell me what this page

1 represents or what these calculations are on this
2 page?

3 A. It's just simply we -- since we did
4 not recover the financial benefit yet from
5 corporation, the financial advantage that the
6 company accrued by delaying/avoiding capital
7 expenditures, this simply takes that 71,705 in
8 economic benefit and just using simple time value of
9 money type of a concept just adds a little bit of
10 interest again to that amount of money.

11 Q. So you take that original 71 down and
12 then you bring it forward until December of 31st of
13 2008?

14 A. Yes. It's just using just simple
15 interest.

16 Q. Okay. So when you add this figure
17 of -- okay. So that amount total as represented in
18 this page is --

19 A. Yeah. Page 2, the \$16,699 on the
20 bottom of Column H is the interest earnings over
21 four or five years on the original economic benefit
22 estimate of 71,705.

23 So you can see at the bottom of
24 Page 2 I added those two figures together in that

1 box down at the bottom of Page 2 to get 88,404.

2 Q. Okay. And, again, that calculation on
3 Page 2 doesn't include through today's date or any
4 further date in the future, it's --

5 A. Correct.

6 Q. -- through December 31st.

7 On Page 2, why did you choose the
8 bank prime loan rate?

9 A. Again, it's just a simple benchmark
10 for the time value of money.

11 Q. Okay. Let's look at the avoided
12 costs. Again, on your original analysis on your
13 original Page 3 you state that \$505,212 is the
14 annual -- is the avoided capital expenditures, is
15 that right, under your analysis part?

16 A. Yes, that's the avoided expenditures
17 for the annual recurring costs.

18 Q. Okay. And that annual avoided costs
19 is 86,000 annually?

20 A. Yes, 86,000 annually, which is on the
21 bottom of Column F there.

22 Q. Okay. Can you tell us what avoided
23 capital expenditures are normally?

24 A. Well, in this particular case it

1 relates to when I've identified that the company
2 bought the pollution control system, which was the
3 RTO. I began to investigate what the annual
4 operating costs and the maintenance costs and the
5 staffing costs to operate that system are.

6 And I worked with David Bloomberg
7 to help me identify some information on the annual
8 costs to operate that RTO because even though we had
9 asked Packaging Personified several times for
10 detailed information on the operating costs of that
11 RTO, we were not able for some reason to secure
12 documentation that showed the annual operating
13 costs. So I used, working with Mr. Bloomberg, some
14 benchmarks from some facilities that were operating
15 a similar RTO device.

16 Q. Okay. In most annual operating costs,
17 what is the largest percentage of money used for?

18 A. Well, as in most cases and in this
19 case, most of the 86,000, probably around 75,000 of
20 that is utility costs, natural gas and electricity.

21 Q. And, again, turning to Page 3,
22 Schedule A, your calculations, can you explain what
23 you have illustrated here concerning that 505,000?
24 I see the last cell, J17, has that total amount, but

1 in Column F you have 86,000 and then different
2 amounts in the cells above it. What is that from?

3 A. It's similar to the concepts that were
4 portrayed in the delayed expenditures as far as,
5 again, you're making the adjustments for inflation
6 through the non-compliance period from 2003 back to
7 1997 and then you're also beginning to examine the
8 tax implications. And what you're after is
9 examining the interest earnings on the net after tax
10 after inflation adjustment cash flows, which is
11 contained in Column I. Those are the net after tax
12 cash flows. And then when you're examining my
13 analysis here you have to look at both Schedule A on
14 Page 3 and that's tied into Schedule B on Page 4.

15 Q. Okay.

16 A. Those two go hand-in-hand.

17 Q. Looking at the next page, Page 4 of
18 Schedule B, can you show us how that goes
19 hand-in-hand?

20 A. Yes. I'm bringing the first column in
21 that Schedule B, Column C, the net after tax cash
22 flows, those I'm bringing over from Column I on
23 Schedule A.

24 Q. Okay.

1 A. Those same numbers in Column I are the
2 net after tax cash flows that have been adjusted for
3 tax implications and inflation. And now on Schedule
4 B I'm examining the interest earnings throughout the
5 non-compliance period on those net after tax cash
6 flows.

7 Q. Okay. And so that's why some of the
8 cells are blacked out?

9 A. Yeah. Because you're dealing with
10 different non-compliance periods. The first one is
11 a seven-year period, you know, six, five, four,
12 three, two, one. So that's the reason that you see
13 that type of formatting there.

14 Q. Okay. So then in Column K for each
15 year you have an amount which gets smaller as you
16 come through time; is that right?

17 A. Right, because you're not earning as
18 much interest because it's a shorter period of time.

19 Q. Okay. And then, again, you get that
20 total of 505,212?

21 A. Correct.

22 Q. When you add Column K together?

23 A. Which is my estimate of the economic
24 benefit through the seven-year non-compliance period

1 by avoiding the costs of operating and maintaining
2 the \$250,000 RTO device.

3 Q. Okay. Looking at Page 5 of your
4 calculations, Mr. Styzens, you have an amount here
5 of compounded interest after taxes in Column H
6 through the years coming forward from 2003 that
7 total 117,658; is that right?

8 A. Yes.

9 Q. And that is additional interest
10 earnings on that avoided annual costs?

11 A. Yes. Since we did not recover the
12 economic benefit yet associated with the avoided
13 costs, the amount continues to earn interest through
14 time and this is simply reflecting that the amount
15 is earning interest up until today's date.
16 Although, this goes through the end of 2008.

17 So there's \$117,658 of interest
18 earned for those four or five years on the 505,212
19 economic benefit for avoided costs. And as you see
20 in the box at the bottom of Page 5 there, I added
21 those two amounts together to get an estimate of
22 economic benefit for avoided costs of \$622,870.

23 Q. In your original amounts for this that
24 you've gotten from -- through help with Mr.

1 Bloomberg, the 86,000, do you know exactly where
2 that came from or how that was developed?

3 A. Yes. I had to approach Mr. Bloomberg
4 with the problem of not having actual operating data
5 for the \$250,000 RTO device and requested that since
6 he was familiar with these type of systems that were
7 used by various corporations, we had identified that
8 there was some permits or some kind of documents in
9 the Bureau of Air that presented some costs for
10 operating an RTO and one we specifically looked at
11 was a company called Formel.

12 Q. And was this 86,000, again, a
13 conservative estimate or the exact same as what you
14 saw?

15 A. Well, in my discussions with
16 Mr. Bloomberg, he had indicated that from his
17 experience and from the size of the RTO that
18 Packaging Personified had purchased for 250,000,
19 that approximately \$100,000 would be a reasonable
20 benchmark for estimating the operating costs and
21 maintenance costs for that type of a piece of
22 equipment.

23 And so when I saw that we had
24 specific information for Formel, I used -- decided

1 to use the 86,000 as, again, a conservative estimate
2 of how much it would cost to maintain and operate
3 this type of device.

4 Q. Okay. Again, giving Packaging the
5 benefit of the doubt?

6 A. And because we couldn't appear to get
7 documented operating and maintenance costs on the
8 \$250,000 RTO that was over there at Packaging
9 Personified for some reason. I don't understand why
10 not.

11 Q. Okay. Page 6 of your capital
12 calculation exhibit is what, Mr. Styzens? Can you
13 tell us what that means?

14 A. That's just a little bit of analysis I
15 do to get an understanding of the inflation index
16 that occurs during the non-compliance period, the
17 Plant Cost Index.

18 Q. So the figures that you have in this
19 Column F are reflected elsewhere in your
20 calculations?

21 A. The Plant Cost Index is brought into
22 the spreadsheets that I use, usually the first few
23 columns where I look at inflation. Those numbers
24 are brought into both the inflation examination for

1 the delayed costs and the inflation examination for
2 the avoided costs.

3 Q. And what does Page 7 of your
4 calculations show?

5 A. That is the bank prime loan rate that
6 I was saying the Federal Reserve Board puts out
7 every month. And it's just what I use as a
8 benchmark for the time value of money through the
9 non-compliance period.

10 Q. Okay. So when you add up all of the
11 delayed costs, plus the interest on those, and all
12 of the avoided cost plus interest on those, you
13 arrive at what figure for total economic benefit?

14 A. Yes. My estimate of economic benefit
15 for delayed and avoided expenditures on pollution
16 control for the seven-year non-compliance period is
17 \$711,274 up through the interest earnings through I
18 think the end of 2008.

19 Q. Are the methods you used in this
20 calculation based on the standard economic
21 principles?

22 A. Yes.

23 Q. Are they similar to the methods that
24 were used in the Eastern Pan Handle case?

1 A. Yes.

2 Q. Were the numbers, again, provided by
3 Packaging for the initial investment of 250,000?

4 A. Yes, through our attorneys.

5 Q. And in this estimate of \$711,274, is
6 that your estimate of the economic benefit of
7 non-compliance accrued to Packaging to a reasonable
8 degree of economic certainty?

9 A. Yes.

10 Q. To your knowledge, is this -- has this
11 sum been paid to the Illinois EPA or to the State of
12 Illinois?

13 A. No.

14 Q. Mr. Styzens, have you reviewed the
15 written opinions of Packaging's experts of Mostardi
16 & Platt, including Mr. Trzupsek's opinion and Chris
17 McClure's opinion?

18 A. Yes.

19 Q. Can you generally describe how
20 Mr. McClure's opinion -- or how they differ from
21 yours?

22 A. Well, there's several things to
23 discuss about Navigant's approach to analyzing
24 economic benefit. Number one, they do not seem to

1 provide any supporting documentation for their
2 numbers to any large extent.

3 And they provided three different
4 scenarios that they analyzed for, like, an adjusted
5 standard scenario, moving the equipment to another
6 facility scenario and buying a used RTO scenario.

7 And then after they did that, they
8 did similar types of analyses as far as adding
9 interest, you know, through a non-compliance period.

10 Q. I note in Mr. McClure's opinion he
11 used a risk free borrowing rate. Do you think
12 that's an appropriate rate?

13 A. No, that's not an appropriate rate
14 because Packaging Personified does not operate in a
15 risk free type of industry. They are in a very
16 extremely competitive industry using, you know,
17 toxics, chemicals and inks and there is a risk
18 associated with that type of industry. So a risk
19 free rate would not be appropriate.

20 Q. Does anyone merit the risk free
21 borrowing rate or who uses that?

22 A. The US government does use that.

23 Q. No private companies get that rate
24 usually?

1 A. Usually, they don't. Once in a --
2 rarely, like a utility company may have something
3 approaching the risk free rate, but very rare.

4 Q. You said that -- I don't know the
5 words you used -- the methodology by Mr. McClure was
6 somewhat similar, just the data inputs were
7 different; is that right?

8 A. Well, there's an issue on supporting
9 documentation is one issue. And, for example, he
10 examines an approach to compliance where he
11 indicates that Packaging Personified would move --
12 may move the equipment to a Sparta facility or a
13 different facility.

14 But the problem I have with the
15 way the analysis is performed, it's supposed to look
16 at the entire non-compliance period from 1997 to
17 2003. Well, Packaging Personified didn't purchase
18 Sparta until the end of 2002, beginning 2003, so I
19 don't understand how you can analyze an event that
20 couldn't occur because Packaging Personified
21 couldn't have moved any equipment to Sparta in '97,
22 '98, '99, 2000. Sparta didn't exist.

23 So, again, you begin to question
24 where's the documentation to support this type of

1 approach that -- this scenario approach where they
2 say, well, this could happen, this may happen.

3 What I analyze is what did happen.
4 It's a case-by-case basis. The federal guidance is
5 clear in the Register. You're supposed to look at
6 every economic benefit case. The 25 or so that I've
7 analyzed over the last ten years, each case stands
8 on its own. You have to look at what the company is
9 doing, what industry do they operate and how they
10 relate to their competitors in their financial arena
11 so that you can level that financial playing field
12 and try to recover any economic advantages that the
13 company may have accrued by not investing in
14 pollution control equipment, instead investing in
15 buying additional equipment or facilities. That
16 money, some of it probably could have been spent on
17 pollution control back in '97, '98, '99, 2000, 2001,
18 2002.

19 Q. Well, I guess, in fact, they probably
20 could have moved to Michigan, but the costs would
21 have included buying a plant, wouldn't it?

22 A. Supposedly, yes. But, again, you
23 know, this is where if you would do your analysis
24 and provide some sort of documentation, then these

1 kind of problems of creating potential solutions to
2 pollution control are not even feasible because
3 facilities don't exist to move your equipment to.

4 Q. You have a labor cost in your
5 calculations of avoided costs; is that right?

6 A. Yeah. There was just, like I say, a
7 few percentage of the delayed -- I'm sorry, the
8 avoided operating maintenance costs were related to
9 staff that would be required to maintain the RTO and
10 to supervise the maintenance staff and things of
11 that nature. And, of course, there is parts and
12 equipment that -- replacement parts and things of
13 that nature I believe is in there, too.

14 Q. Mr. Styzens, what is your
15 understanding of the statement that economic benefit
16 shall be determined by the lowest cost alternative
17 for achieving compliance? Do you know what that
18 statement refers to?

19 A. Yeah. I mean, it's a concept that has
20 been brought out in some cases that have been
21 litigated in the United States, Allegheny, Bloodlow,
22 Courtney Smithfield (phonetic), and what it pertains
23 to, it doesn't pertain to identifying five, six or
24 seven scenarios that may have a lower cost.

1 What would be equivalent to
2 applying it to this particular case would be that
3 if -- let's say that Packaging Personified did buy a
4 used RTO for \$75,000 and they put that used RTO for
5 \$75,000 in place and it's over there working and
6 they achieved compliance with pollution
7 requirements.

8 Now if I, as the government's
9 analyst, would come in and say, no, you should have
10 bought a brand new RTO for 250,000, so I'm going to
11 analyze 250,000.

12 If you look at the litigation that
13 occurred like in that Allegheny case and the
14 Courtney Smithfield, that's what the feds are
15 saying, that the government can't force a higher
16 cost solution on the solution that was actually used
17 to come into compliance.

18 In one of the cases like Allegheny
19 or Courtney, the government analyst tried to say
20 that even though the company spent two, \$300,000 on
21 this pollution control equipment and came into
22 compliance, the federal analyst said, well, they
23 should have paid a little bit more for a better one.
24 And the court said, no, let's just stick with what

1 they actually spent to come into compliance and
2 we'll stick with that, there's no need to jump up to
3 a higher cost type of piece of equipment.

4 So it's not being applied properly
5 here in this case. And if they would look at some
6 of the litigated cases, they would see that.

7 Q. Okay. So in your opinion the
8 Packaging Personified's purchase of this RTO that
9 they did buy did represent the lowest cost
10 alternative to achieving compliance for them?

11 A. Well, that's a very important
12 financial concept because what Packaging
13 Personified -- they hire managers and capital asset
14 planners and managers to sit down and they make
15 decisions on how are they going to manage the
16 company's capital assets and their finances and
17 invest looking out into the future.

18 And what managers are supposed to
19 do is identify all the feasible alternatives,
20 identify the costs and benefits and they pick the
21 approach that provides the lowest costs, best
22 solutions, most efficient and effective solution to
23 whatever problem they're analyzing, whether it's
24 pollution control or OSHA safety rules or maximizing

1 owner wealth.

2 But the bottom line is that's what
3 managers do, that's the concept, you pick the best
4 lowest cost solution. And that's what they would
5 have done here. When they were analyzing moving
6 equipment to other facilities or going for adjusted
7 standards or they're analyzing buying a \$250,000
8 RTO, the managers would have to do some very complex
9 cost analysis and make sure they're picking the best
10 lowest cost choice given the circumstances in their
11 particular corporation.

12 And that's what they did here.
13 They picked the \$250,000 RTO because, in my opinion,
14 from reading the condition in this very competitive
15 industry, this company was expanding their
16 activities and growing and growing and growing and
17 that would be the one solution that would really
18 allow management to grow their customer base and
19 their product lines by having a very good, brand new
20 piece of equipment to manage their waste.

21 Q. Okay. _

22 MS. WHEELER: Just a moment,

23 Mr. Halloran.

24 (Brief pause.)

1 MS. WHEELER: I have nothing further
2 at this time.

3 HEARING OFFICER HALLORAN: Thank you,
4 Ms. Wheeler. Mr. Harsch.

5 MR. HARSCH: I would like to take a
6 short recess.

7 HEARING OFFICER HALLORAN:
8 Five minutes. Is that enough, Mr. Harsch?

9 MR. HARSCH: Yeah.

10 (Whereupon, after a short
11 break was had, the
12 following proceedings
13 were held accordingly.)

14 HEARING OFFICER HALLORAN: We can go
15 back on the record. Mr. Harsch.

16 CROSS EXAMINATION

17 BY MR. HARSCH:

18 Q. Good afternoon, Mr. Styzens. You have
19 a master's in business administration?

20 A. Yes.

21 Q. Have you ever worked anywhere other
22 than for state government?

23 A. Yes.

24 Q. Where?

1 A. I've had numerous jobs, you know,
2 before college but, I mean, my principal jobs have
3 been with the State of Illinois.

4 My first job was with the
5 Department of Public Aid, which is a \$4 billion
6 organization with 10,000 staff and 115 offices, a
7 very complex multi-billion dollar organization is
8 where I basically got most of my training right out
9 of college.

10 The other jobs were, you know,
11 minuscule compared to the first job which was in
12 accounting, an auditor with the Department of Public
13 Aid.

14 Q. So all of your professional experience
15 has been as an internal auditor for various state
16 agencies?

17 A. Most of it, yes.

18 Q. Most of it or all of it?

19 A. Right now I'm actually more of a
20 financial analyst, but internal auditing,
21 accounting, financial analyst for state agencies
22 like Public Aid and Environmental Protection Agency.

23 Q. You've never worked as an internal
24 auditor or financial benefit analyst in the private

1 sector?

2 A. No.

3 Q. Do you believe you're -- what training
4 have you had in management decisions?

5 A. Well, I basically audit management
6 decisions. I assess whether management has a
7 control process in place to make good management
8 decisions to document them. You know, again, Public
9 Aid was a \$4 billion corporation basically with all
10 kinds of managers and programs and budgets and
11 financial systems and computer systems that I
12 audited.

13 Q. You've never audited management
14 decisions in the private industry, have you?

15 A. No.

16 Q. Is there a difference in management
17 structure between multi national corporations and
18 large national corporations?

19 A. Well, that's kind of a vague question.
20 Are there differences? What is the question?

21 Q. Yes.

22 A. It's too vague of a question.

23 Q. You opined earlier on management
24 decisions people make. Do those management

1 decisions -- do the management structures vary
2 depending upon the size of the corporation?

3 A. I would say no. I think they vary in
4 size, but the basic makeup of management systems are
5 pretty much standard. It's more of the size that
6 varies.

7 Q. Have you ever examined small
8 family-owned businesses, the people that run them or
9 the family members in terms of their management
10 structure?

11 A. I mean, a little bit as it relates to
12 I did do some -- when I was internal auditor at
13 Public Aid, I did audit some contractors in
14 nonprofit organizations that were small, small
15 nonprofit groups that ran social service programs
16 like homeless shelters and various other types of
17 programs for social services.

18 Q. It's not your testimony that small
19 businesses routinely higher management consultants
20 or experts to assist them in management decisions,
21 is it?

22 A. Ask it again. I'm sorry.

23 Q. Is it your -- did I understand you
24 correctly that you think that small -- for example,

1 small businesses would hire management consultants
2 or independent managers to help them make their
3 business decisions?

4 A. Sure. Yes.

5 Q. That's done routinely in small
6 businesses?

7 A. Small businesses can hire managers to
8 help them manage their small business, that's
9 correct.

10 Q. They can. Do you know if it's
11 routinely done?

12 MS. WHEELER: Objection, your Honor.

13 BY THE WITNESS:

14 A. I would say it would be a reasonable
15 conclusion that small companies can hire managers to
16 help them with certain areas of expertise that they
17 may not have to run their small business.

18 BY MR. HARSCH:

19 Q. Okay. Enough of that. What
20 businesses is Packaging Personified in?

21 A. As I began to gather more information
22 on this particular -- the specifics of this
23 particular case, as I said in my deposition, I began
24 to look at professional articles that were out in

1 the internet, that type of a situation where I began
2 to look at the articles that described the type of
3 businesses that Packaging Personified worked in and
4 also described a lot about how Packaging Personified
5 was managed.

6 The articles interviewed the
7 owners and the managers that discussed their
8 approach to managing their business and how they
9 operated Packaging Personified. So there was quite
10 a bit of information in the several articles by
11 several trade groups and professional organizations
12 in the converting and printing business.

13 There's the Institute of --

14 Q. Mr. Styzens --

15 A. I'm still answering that question.
16 There's the Institute of Professional Packaging.
17 There's the Paper, Foil and Film Converters Group.
18 There's the Flexible Packaging Group that produces a
19 trade magazine. There's a converters magazine.
20 There's several trade groups and organizations out
21 there that the -- this particular business related
22 to printing and developing bag containers and
23 printing on those containers.

24 There's several trade groups and

1 organizations that provide training and things of
2 that nature to small and midsize businesses like
3 Packaging Personified.

4 MR. HARSCH: Mr. Hearing Officer, I
5 just simply -- I kind of object to the whole
6 answer. I just simply asked him what
7 business were they in.

8 HEARING OFFICER HALLORAN: Well, I
9 realize he told you he wasn't finished, but
10 be a little more adamant. The answer stands.
11 You may proceed, Mr. Harsch.

12 BY MR. HARSCH:

13 Q. What business is Packaging Personified
14 in?

15 A. Well, what I was getting at by those
16 organizations is that they're in the printing
17 business and they also have expanded into
18 development of bag containers and printing on those
19 containers and things of that nature for they
20 indicated, like, medical companies, dog food, retail
21 food products, Solo cups. I mean, I've seen -- the
22 reason I gave you the answer about the publications
23 was --

24 MR. HARSCH: Mr. Hearing Officer, I

1 object.

2 HEARING OFFICER HALLORAN:

3 Mr. Styzens, just stop for a minute.

4 MR. HARSCH: I object. I just simply
5 asked what business they were in.

6 HEARING OFFICER HALLORAN: Yeah,
7 that's kind of a concise question, so if you
8 can just --

9 THE WITNESS: I was just describing my
10 sources.

11 BY THE WITNESS:

12 A. Okay. I was just giving my sources.
13 But they're in the printing and bag container type
14 of businesses.

15 BY MR. HARSCH:

16 Q. What type of printing -- if you know,
17 how would you characterize of type of printing
18 operations they perform?

19 A. Well, again, in those articles that I
20 discussed -- I do not know a lot about the type of
21 printing, but I do know that they provided printing
22 and types of color enhancement and printing on bags
23 and things of that nature. That's about the extent
24 of what I know about the particulars of the type of

1 printing.

2 Q. Do you know if the regulations apply
3 differently to different types of the printers that
4 we're talking about?

5 A. No.

6 MS. WHEELER: Objection, your Honor.
7 This is all beyond the scope of his
8 expertise, which is an economic benefit
9 analyst.

10 MR. HARSCH: I don't think so. I
11 think this goes to leveling the playing field
12 and doing his research and who the
13 competition is.

14 HEARING OFFICER HALLORAN: Objection
15 overruled. I think it's fair game.

16 BY MR. HARSCH:

17 Q. Mr. Styzens, do you know who -- since
18 you don't know the specific type of printing that
19 they perform, do you know who Packaging Personified
20 competes with for their business specifically?

21 A. I know that from reading those
22 articles that they have a very competitive industry,
23 but I do not know all of their competitors names.

24 Q. Do you know any of them?

1 A. I was under the impression that Formel
2 and some of those other organizations that I
3 discussed with Mr. Bloomberg were somewhat
4 competitors of Packaging Personified.

5 Q. Did you do any -- apart from reading
6 these articles, did you do any independent analysis
7 of what Packaging Personified's business is?

8 A. Just from the extent of looking at the
9 trade publications that discussed it and interviewed
10 the Packaging Personified staff and indicated what
11 types of activities they did there.

12 Q. And those were the various articles
13 that you went on about when I asked you what
14 business they were in, correct?

15 A. Correct.

16 Q. Do you know how many printing presses
17 are at issue in this case?

18 A. No.

19 Q. Do you know if -- do you know which
20 printing press or presses are out of compliance for
21 which the State is maintaining that an RTO is
22 necessary?

23 A. I do not know in detail how many
24 printers that the company had associated with that

1 particular RTO. I've heard discussions of a couple
2 printers, but I don't have an in-depth background on
3 the number of printers that were associated with the
4 RTO.

5 Q. Do you know if -- how many printing
6 presses are at Formel?

7 A. No.

8 Q. And did I understand the answer to my
9 question that you relied upon information that
10 Mr. Bloomberg provided you that had been submitted
11 to the Agency regarding Formel's actual costs of
12 operating an RTO unit?

13 A. State the question again.

14 Q. Did I understand that you relied upon
15 information provided by Mr. Bloomberg as to the
16 actual costs of Formel for running an RTO for the
17 \$86,000 a year capital operating costs?

18 A. No. I would say I've relied just on
19 Formel's information.

20 Q. Where did the \$86,000 come from?

21 A. I approached an expert at EPA,
22 Mr. Bloomberg, and I asked him for information on
23 the annual operating and maintenance costs for a
24 \$250,000 type of RTO system that Packaging had in

1 place.

2 As part of those discussions,
3 Mr. Bloomberg identified that Formel was a
4 reasonable benchmark. But it went much further than
5 that as far as Mr. Bloomberg did have experience
6 with identifying other types of organizations that
7 had similar types of equipment.

8 And now I had testified and was
9 deposed before that Mr. Bloomberg had indicated to
10 me that his expert opinion was that \$100,000 a year
11 was a reasonable estimate benchmark to operate this
12 type of piece of equipment and maintain it.

13 So I, taking a conservative
14 approach, was able to identify specific information
15 for Formel. And so instead of using the \$100,000,
16 which I could have done, that would have been
17 reasonable, I decided to be conservative and I had
18 actual information about how to maintain and operate
19 a similar piece of equipment, so I chose to do that.

20 Because -- one last thing,
21 Packaging Personified would not give me the
22 information about the operating costs of the actual
23 piece of equipment, so I was forced to use a
24 benchmark.

1 Q. Did you rely on the \$86,000 figure
2 that Mr. Bloomberg gave you for the cost that Formel
3 incurred for operating a similar system?

4 A. Well, I don't agree with your term
5 "rely." I used the information of Formel, but I
6 relied on an expert at EPA, Mr. Bloomberg.

7 Q. We were provided with background
8 information regarding that estimate. That was
9 brought out during the deposition. Are you familiar
10 with this document that I'm handing you?

11 A. Yes.

12 Q. And what is that document?

13 A. It appears to be the -- my initial
14 analysis on this case started in 2005 and at that
15 time I was temporarily assigned over to a different
16 agency for a couple of years, Central Management
17 Services, but I was performing a similar type of
18 activities.

19 And I had started the project in
20 2005 and began to put together a set of audit work
21 papers to document my work on the particular case
22 and these appear to be my work papers that I
23 developed when I was over at CMS, Central Management
24 Services, for a short period of time.

1 Q. And it's my understanding that you
2 provided those to your counsel who provided it to us
3 as background for you?

4 A. Correct. That's my understanding.

5 Q. And that's a true and accurate copy as
6 far as you know?

7 A. It appears to be, yes.

8 MR. HARSCH: That's the only copy we
9 have, but I'd like to mark that as Exhibit 57
10 and move it into evidence.

11 MS. WHEELER: Mr. Halloran, I have to
12 object because my understanding is that this
13 was a settlement document used to formulate a
14 figure in terms of settlement and, therefore,
15 it should not be produced in open court.

16 BY MR. HARSCH:

17 Q. I believe the witness has testified
18 that it contains the background information that you
19 used for your current estimate; is that not correct?

20 A. Well, I'd have to agree with counsel
21 here that it was done in a settlement situation, so
22 I don't know. I'm not the attorney, though.

23 Q. Well let me ask a few more questions
24 and then maybe we can -- then I'll withdraw my

1 motion at this point in time.

2 That document contains the cost
3 figures you were provided by Mr. Bloomberg for the
4 \$86,000 for Formel; is that correct?

5 A. Yes.

6 MR. GRANT: Can we see the exhibit?
7 We're not sure if this is an earlier document
8 or if this is one --

9 MS. VILLASENOR-RODRIGUEZ: No. This
10 was all produced at the deposition and I have
11 the entire set.

12 MR. GRANT: This is a current estimate
13 or this is a new one?

14 MR. HARSCH: We were given it at his
15 deposition.

16 MR. GRANT: Okay.

17 MS. WHEELER: May I have a copy of it?

18 MR. HARSCH: It's my only copy.

19 MR. GRANT: Well, give us one minute
20 to look at it.

21 HEARING OFFICER HALLORAN: If we can
22 talk one at a time.

23 MR. HARSCH: We'd be happy to go off
24 the record and let them examine it.

1 HEARING OFFICER HALLORAN: We're off
2 the record.

3 (Whereupon, a discussion
4 was had off the record.)

5 HEARING OFFICER HALLORAN: Back on the
6 record.

7 BY MR. HARSCH:

8 Q. I have a blue tab on what has a
9 handwritten note on the bottom.

10 A. Right.

11 Q. Roman numeral two, B1 and B2, are
12 those the Formel costs that you got from
13 Mr. Bloomberg?

14 A. Yes.

15 Q. And that's the \$86,000 that
16 Mr. Bloomberg told you that Formel spends to operate
17 a comparable RTO unit to the \$250,000 one that they
18 bought?

19 A. Except for the -- the 86,000 is
20 included in this document, but I want to document --
21 I want to make it clear that I didn't include quite
22 a few costs related to overhead and taxes and
23 capital recovery. I just took labor and maintenance
24 and utilities and I backed out or factored out the

1 two to \$300,000 of other costs that Formel had.

2 Again, what led me to that was
3 Mr. Bloomberg saying that from his experience as an
4 expert he felt that \$100,000 was a reasonable
5 benchmark. And so I focused in on this \$86,000
6 because, again, I thought that was a reasonable
7 estimate in lieu of not having the actual numbers
8 from Packaging Personified because they wouldn't
9 give them to me.

10 MR. HARSCH: I'm going to object to
11 those answers because I believe those were
12 similarly in settlement negotiations, were
13 they not, Mr. Grant?

14 MR. GRANT: Well, the statement about
15 him not being given documents that were
16 requested I think is just a fact. It's not a
17 settlement issue.

18 MR. HARSCH: Anyway, I'll move for the
19 introduction into evidence as Exhibit 57 what
20 is marked as Roman numeral IIB1 and the back
21 of it is IIB2.

22 HEARING OFFICER HALLORAN: So you
23 still want to enter it --

24 MR. HARSCH: Yes.

1 HEARING OFFICER HALLORAN: -- even
2 though you stated earlier you were going to
3 withdraw the exhibit as long as Mr. Styzens
4 testified to the number \$86,000? You still
5 want to enter it?

6 MR. HARSCH: I still want to enter it.

7 MS. WHEELER: One page.

8 HEARING OFFICER HALLORAN: The
9 one page?

10 MR. HARSCH: Yeah.

11 HEARING OFFICER HALLORAN: Thank you.

12 So admitted.

13 BY MR. HARSCH:

14 Q. At the time that Mr. Bloomberg
15 provided that exhibit to you, did you also discuss
16 any other companies?

17 A. I can't remember the names of them.
18 There was a couple other companies I think I
19 mentioned in my notes. I can't recall their names.

20 Q. I'm looking at the note here regarding
21 my 3/14/05 e-mail, mentions 100,000 for Argus?

22 A. Yeah. I believe that was part of the
23 conversation where Mr. Bloomberg said from his
24 expert experience that his exposure to other

1 companies using a similar device, that \$100,000 was
2 a reasonable benchmark. And I think at that point
3 the discussion related to Argus.

4 Q. And is it your understanding that that
5 \$100,000 relates to costs for operating a similar
6 RTO unit by Argus?

7 A. No. I would say that's not a correct
8 statement. My understanding was from Mr. Bloomberg
9 that the \$100,000 in operating maintenance costs was
10 a reasonable benchmark to identify avoided costs for
11 a device similar to the \$250,000 RTO purchased by
12 Packaging Personified. Irregardless if it's Argus
13 or Bema or any other competitor in the industry, his
14 expert experience was that \$100,000 was a reasonable
15 benchmark.

16 Q. Are you aware of any other companies
17 that spend \$100,000 actual per year to operate an
18 RTO unit of the size that Packaging Personified
19 installed?

20 A. I don't have background in that area.

21 Q. Are you aware of any actual costs,
22 apart from this exhibit, of the cost of operating an
23 RTO unit?

24 A. My numerous requests for actual costs

1 and documentation --

2 MR. HARSCH: Mr. Hearing Officer, I'll
3 object to his question (sic). It's a simple
4 yes or no, is he aware or not.

5 HEARING OFFICER HALLORAN: Sustained,
6 Mr. Styzens.

7 THE WITNESS: Repeat the question,
8 please?

9 MR. HARSCH: Read the question back,
10 please.

11 (Whereupon, the requested
12 portion of the record
13 was read accordingly.)

14 BY THE WITNESS:

15 A. No.

16 BY MR. HARSCH:

17 Q. Did you ever ask Mr. Bloomberg for
18 actual costs of anyone other than the Formel costs
19 in this exhibit?

20 A. I asked him for benchmarks, reasonable
21 benchmarks. Whether he used actual costs, I didn't
22 really guide him in that. He's the expert. I just
23 asked him for what would be reasonable benchmarks.

24 Q. Mr. Styzens, do you know if a control

1 device if it's sized to handle three presses and it
2 only handles two presses because the third press
3 isn't built yet, whether the operating costs are
4 lower or higher?

5 A. I don't have a lot of background in
6 that. That sounds like that would make -- there's
7 probably -- I don't know enough about how the RTO
8 operates to significantly answer that question.

9 Q. You understand that Packaging
10 Personified purchased a \$250,000 RTO unit and hooked
11 up an existing press five and a new press six and
12 left room for future growth, though --

13 A. Go ahead.

14 Q. I believe you covered that in your
15 direct?

16 A. I believe that when the management sat
17 down and tried to evaluate what type of pollution
18 control system that they needed, that was the one
19 that they selected.

20 Q. Does your assignment of the \$86,000
21 operating cost as part of your economic benefit take
22 into consideration the fact that Packaging
23 Personified was only -- had only hooked up two
24 presses to the RTO unit?

1 A. There are many, many costs associated
2 with operating that device. That may be one of
3 them, but there's probably a whole set of costs that
4 are associated with operating that RTO that I
5 haven't been given information on, so it's difficult
6 for me to answer those type of questions.

7 Q. It's a simple question.

8 A. Okay. Ask it again.

9 Q. You took an \$86,000 cost benchmark, as
10 you've said, or estimate from Mr. Bloomberg?

11 A. Correct.

12 Q. That was for the actual operating
13 costs for a unit that Formel operated. And you
14 applied that for your -- as part of your economic
15 benefit analysis, that's correct?

16 A. That's correct.

17 Q. And at that time that -- throughout
18 this time period I think you testified you
19 understood that Packaging Personified only had two
20 presses hooked up to that unit and it was sized for
21 a third press that has not yet been bought?

22 A. No. I'm saying it could have been
23 sized for 20 presses. I mean, I don't know. I
24 don't know how many -- all I know is that when

1 management sat down to identify what pollution
2 control system that they wanted to select, they
3 selected a \$250,000 RTO. I don't know if it was to
4 put seven or ten or two pieces of equipment on it.

5 MR. HARSCH: I'm going to object. It
6 seems to me it's a simple answer.

7 HEARING OFFICER HALLORAN: It is a
8 simple answer and Ms. Wheeler can clarify it
9 or qualify it on redirect.

10 THE WITNESS: Okay.

11 HEARING OFFICER HALLORAN: Try to
12 answer.

13 BY MR. HARSCH:

14 Q. Did you make any change or take into
15 account in any way when you used the cost estimate
16 of 86 -- benchmark cost estimate from Formel of
17 \$86,000 for the fact that Packaging had only hooked
18 up two presses and that the control device was large
19 enough to handle a new press for future growth?
20 It's a yes or no answer.

21 A. I mean, yes, from the standpoint of I
22 knew that Packaging Personified, by purchasing that
23 \$250,000 RTO, may hook up varying amounts of pieces
24 of equipment to it. I mean, I knew it could be more

1 than just one or two. I mean, I did take that into
2 account that it was up to Packaging Personified to
3 decide what size RTO they needed.

4 Q. I'm not talking about the size of the
5 RTO. I'm talking about the actual operating cost
6 figure that you included of \$86,000 that you were
7 given by Mr. Bloomberg.

8 Did you make -- does your analysis
9 make any account for the fact that they were only
10 operating less than the full number of units they
11 could hook to it?

12 A. Well, I mean, yes, because it's a
13 benchmark. I mean, it basically -- when you use the
14 term benchmark, you're trying to say that on average
15 this piece of equipment --

16 MR. HARSCH: Mr. Hearing Officer.

17 HEARING OFFICER HALLORAN: Sustained.

18 Ms. Wheeler, you can qualify or clarify it on
19 redirect. Mr. Styzens, it's a yes or no.

20 And if you need more information
21 or have to qualify, Ms. Wheeler, I'm sure,
22 will be able to bring that out in redirect.

23 THE WITNESS: That's fine.

24 HEARING OFFICER HALLORAN: Thank you.

1 BY THE WITNESS:

2 A. By the fact that it's a benchmark,
3 yes.

4 BY MR. HARSCH:

5 Q. Can you show me where in your analysis
6 you -- and your report you made such a change?

7 A. Again, by the fact that it's a
8 benchmark, which is just designed to be an
9 average --

10 Q. Can you show me --

11 A. -- or a standard, a middle point.
12 It's a midpoint --

13 HEARING OFFICER HALLORAN:

14 Mr. Styzens, you have let Mr. Harsch ask a
15 question and try to answer it as succinctly
16 as you can. Again, if there's a problem, the
17 People will help out on redirect.

18 BY MR. HARSCH:

19 Q. Mr. Styzens, I think I've said here
20 you used \$86,000 and discounted it backwards -- and
21 I'm looking on Page 3 of your report.

22 -You just testified that you made a
23 change to that \$86,000 to reflect the fact that
24 Packaging only hooked up two presses. What

1 change -- in this analysis, can you show me any
2 change that you made there?

3 A. Well, if that's what you indicated as
4 my answer, that's not a correct answer. What I was
5 trying to get the point across is that the \$86,000
6 is like a benchmark amount. Whether there's --
7 sometimes there could be three or four devices.

8 MR. HARSCH: Mr. Hearing Officer.

9 HEARING OFFICER HALLORAN: Let's go
10 off the record.

11 (Whereupon, a discussion
12 was had off the record.)

13 HEARING OFFICER HALLORAN: We're back
14 on the record. Mr. Styzens is still under
15 oath. Mr. Harsch, ask a question, please.

16 BY MR. HARSCH:

17 Q. Can you show me where in your report
18 you made any modification or change to the \$86,000
19 operating costs that you used on the basis that
20 Packaging only hooked up two presses out of the
21 three that the thing is big enough to serve?

22 A. I did not make any changes. I relied
23 on Mr. Bloomberg's expertise. That's it.

24 Q. So your prior answer was incorrect?

1 You didn't understand?

2 A. I didn't understand the total
3 question.

4 Q. Thank you. And you have no
5 independent knowledge about whether or not hooking
6 up two presses to a control device sized for three
7 changes the actual operating costs?

8 A. I relied on Mr. Bloomberg's expertise
9 on that.

10 Q. You have no independent knowledge?

11 A. Just Mr. Bloomberg's knowledge.

12 Q. Where did the labor costs for staff,
13 maintenance, supervisory and parts come from that
14 you used in your analysis?

15 A. It was part of the benchmark for
16 Formel.

17 Q. So, again, those were provided to you
18 by Mr. Bloomberg?

19 A. Through Formel's document, yes.

20 Q. And you don't have any independent
21 knowledge of the size of the RTO unit that Formel
22 installed?

23 A. Mr. Bloomberg does, not me.

24 Q. When you were talking about operating

1 costs with Mr. Bloomberg, he brought up Argus?

2 A. It was part of the conversation,
3 Formel, Argus.

4 Q. Do you know the size of the RTO unit
5 that Argus installed?

6 A. The only information I got about the
7 size of the RTO was that I requested that
8 Mr. Bloomberg give me the operating costs for an RTO
9 device similar to what Packaging Personified had.
10 That's all I asked.

11 Q. And you understand that the \$100,000
12 figure was -- for Argus was for some -- for a
13 comparable-sized unit?

14 A. That was my understanding, yes. Not
15 just Argus, but that type of unit.

16 Q. Do you know where Argus' plant is
17 located?

18 A. No.

19 Q. Do you know if they, in, fact
20 installed an RTO?

21 A. No.

22 Q. Do you know where the Formel plant is
23 located?

24 A. No.

1 Q. Do you know if they installed an RTO
2 unit?

3 A. No.

4 Q. Did you do any independent analysis
5 and verification of the Agency permit files to
6 determine if Argus has a plant in Illinois?

7 A. No.

8 Q. Did you do any independent analysis of
9 the permit file to see if Argus, in fact, has an RTO
10 on that plant?

11 A. No.

12 Q. You did you do any independent
13 analysis of the permit file to see where Formel is
14 located?

15 A. No. I relied on Mr. Bloomberg.

16 Q. Did you do independent analysis to
17 determine if Formel, in fact, installed an RTO unit?

18 A. No. I relied on Mr. Bloomberg.

19 Q. Do you have any idea what the total
20 utility cost is for a company the size of Packaging
21 Personified, for its entire operations?

22 A. No.

23 Q. Do you know any -- do you have any
24 concept or idea of what the relative percentage is

1 of the total operating utility costs with gas and
2 electricity for a flexographic printer between
3 control devices and other sources?

4 A. No.

5 Q. Do you know what compliance
6 alternatives were available to Packaging Personified
7 to come into compliance?

8 A. Yes, the one they selected.

9 Q. This is going to be a hypothetical.
10 Packaging Personified has two solvent-based presses,
11 press four and press five, at the time of the
12 inspection and the subsequent violation notice. And
13 if it's determined that press five is, in fact,
14 meeting the substantive requirements and doesn't
15 need a control device -- that's the hypothetical
16 part -- and the company subsequently shuts down
17 press four, which I believe the record shows and you
18 know was done in December of 2002, how would that
19 change how you would approach the economic benefit
20 analysis?

21 A. It wouldn't change it at all.

22 Q. If the company shut down press two,
23 the non-compliant press, and shifted its production
24 to another press that was in compliance, would that

1 change your analysis?

2 A. I mean, whenever you examine the
3 delayed or avoided capital expenditures, any time
4 the amount of delayed or avoided capital
5 expenditures changes, it's going to change your
6 estimate of economic benefit.

7 Q. So that would change your analysis?

8 A. I mean, if it was a feasible
9 alternative, if I felt that it was a feasible or a
10 reasonable way to approach compliance, given the
11 competitiveness of the industry and the expansion of
12 Packaging Personified, who was aggressively
13 expanding in their marketplace, I mean, those type
14 of issues -- that's why I think you're
15 oversimplifying it.

16 It's not just a -- it's not always
17 just a yes or not answer. It's a very complex cost
18 analysis. When Packaging Personified sat down and
19 decided what pollution control device did they want
20 to select, there's 20, 30 different cost variables
21 that they have to analyze.

22 Q. Mr. Styzens, under my -- again, this
23 is a hypothetical, that Packaging Personified could
24 demonstrate that press five complied with the

1 substantive requirements of the environmental
2 regulations, met the control percentage requirements
3 and they shut down their only other solvent press in
4 December of 2002 and switched production from that
5 non-complying solvent-based press to press five; how
6 would you calculate the economic benefit?

7 A. Again, in this particular case I'm
8 examining the benchmark operating costs of the
9 \$250,000 RTO device. When I -- that was -- the
10 point I was trying to make earlier, the fact that
11 it's a benchmark indicates that throughout the
12 seven-year non-compliance period there may be
13 changes in the number of pollution control -- or the
14 number of devices that are controlled by that RTO.

15 Two years it may be two devices,
16 two years it may be six devices. But the point
17 being is only the management of the company that
18 made the decision to buy that RTO knew what their
19 plans were. That's what you do, you hire a capital
20 manager and managers that are going to look five or
21 six years out and they'll be the only ones that know
22 how many devices they're going to have on the RTO
23 today and how many devices are they going to have
24 four years from then when they add different

1 customers to their --

2 Q. Mr. Styzens, under my question, if the
3 company shuts down so they have two non-complying
4 presses, that's all they have, in the complaint
5 they're solvent-based presses, if I make the
6 assumption that they can demonstrate through
7 appropriate stack tests that press five as it
8 existed complied with the environmental substantive
9 requirements, Packaging Personified shut down the
10 non-complying solvent-based press, how would you
11 calculate the economic benefit?

12 A. Well, the first thing I'd ask you is
13 where is your documentation, because it doesn't
14 sound reasonable to me for you to sit here and tell
15 me that Packaging Personified is going to be
16 shutting down printers when it's clear from the
17 literature that this company was very aggressively
18 not only adding customers, but adding different
19 products to their business.

20 I mean, this company was a
21 growth -- in a growth period. I've never heard of a
22 company that's growing at the rate that Packaging
23 Personified is growing at shutting down equipment.
24 If anything, they're adding equipment.

1 Q. Well, stay here and you'll hear it.
2 Did Packaging Personified install a new press six,
3 which was an eight-color press, do you have any
4 knowledge of that?

5 A. Yes. There was an article that talked
6 about that Packaging was -- continued to expand and
7 they were adding additional presses. They were up
8 to now, like, 600 customers, different product
9 lines. Yeah, there was quite a few articles
10 discussing that Packaging was aggressively expanding
11 their business and adding printers.

12 Q. And was that expansion done through
13 the -- if you're aware, through the capabilities of
14 the new press six to print eight color?

15 A. I don't know. I knew they were adding
16 printers, they were expanding their business.

17 Q. Okay. You've answered the question.

18 A. Okay.

19 Q. Did you calculate the discount rate or
20 was it given to you?

21 A. The discount rate, the interest rate?

22 Q. Yeah, the discount rate that you used.

23 A. It's the prime lending rate. Is that
24 what you're talking about?

1 Q. Do you rely on EPA's BEN Manual in
2 doing economic benefit analysis?

3 A. No.

4 Q. You don't rely on it for even
5 guidance?

6 A. Some guidance, yes.

7 Q. Do you pick and choose the guidance or
8 do you use all of it?

9 A. I use all of it.

10 Q. Does the BEN Model have guidance
11 regarding calculating economic benefits when
12 increased capacity is being added?

13 A. There is some sections of guidance in
14 the BEN Manual which, again, is, you know, designed
15 for settlement purposes and there's only one
16 document in the whole array of documents that can be
17 used for guidance. This primarily is used in
18 settlement negotiations here.

19 Q. In the BEN Manual that's part of
20 Mr. McClure's testimony or report at Page 3-9 --

21 HEARING OFFICER HALLORAN: What tab is
22 that under, Mr. Harsch?

23 MR. HARSCH: That would be --

24 MS. VILLASENOR-RODRIGUEZ: This is

1 Chris McClure's expert report. Do you have
2 that binder in front of you?

3 MR. HARSCH: It's a separate binder.
4 It's so big.

5 HEARING OFFICER HALLORAN: If I need
6 it, I'll yell.

7 BY MR. HARSCH:

8 Q. It's the copy of US EPA's BEN Manual,
9 correct, you're familiar with it?

10 A. Yes.

11 Q. And is this the statement you're
12 referring to on 3-9 under Paragraph 1, Compliance
13 Costs Components, Section 2?

14 A. I wasn't really alluding to anything.
15 Were you alluding to something?

16 Q. Are you familiar with this section at
17 the end of Paragraph 1, Subparagraph 2 --

18 A. Yes.

19 Q. -- where it says, quote, similarly, if
20 the violator is adding capacity to accommodate
21 normal anticipated business growth and on-time
22 compliance would not have entailed such additional
23 capacity, then you should exclude the incremental
24 cost of additional capacity. Do you agree with that

1 statement in calculating economic benefit?

2 A. Well --

3 Q. Yes or no?

4 A. No, because you have to look at a
5 case-by-case basis. It's not -- you can't say yes
6 because it doesn't apply to every case equally is
7 what the problem is. And that's what the Federal
8 Register says. You've got to look at it at a
9 case-by-case basis.

10 Q. Did you take into consideration the
11 fact that Packaging Personified was installing
12 excess capacity?

13 A. Yes. Given the case-by-case
14 circumstances in this industry, which is highly
15 competitive, and the fact that Packaging Personified
16 was continuing to add additional customers and
17 products to their product line, that made sense to
18 me. That's what I was trying to tell you is that
19 when management sat down to decide what type of
20 pollution control device they're going to select,
21 they had to select one that would allow them to work
22 with all these different pieces of equipment that
23 they were going to be purchasing, you know, some
24 taking on, some putting off, you know, taking off,

1 putting on.

2 It's management that knows best
3 about what pollution control device that they're
4 going to select given the industry that they're
5 operating in. And they made this decision is what
6 I'm saying.

7 MR. HARSCH: It's a very simple
8 question, Mr. Hearing Officer.

9 BY MR. HARSCH:

10 Q. Where in your analysis did you take
11 into consideration, if you did, the exclusion of
12 incremental costs for additional capacity? Where in
13 your analysis did you do it?

14 A. I determined that the operating costs
15 for this size of RTO was reasonable based on the
16 benchmark and given the -- I didn't make an
17 adjustment to it because I believe that in this
18 particular industry that that was a reasonable level
19 of compliance costs, operating costs.

20 Q. Would there have been a different set
21 of competitive management decisions between 1997 and
22 the time Packaging Personified made the decision in
23 2003 to purchase the RTO for \$250,000, if you know?

24 A. Ask it one more time.

1 Q. Was there any changes in the
2 competitive nature of the flexographic printing
3 business between 1997 and 2003, if you know, in
4 terms of the competitive nature?

5 A. The only indication I had was that,
6 you know, beginning to read some analyses from the
7 owners that are contained on the websites that
8 beginning around 2001 Packaging Personified appeared
9 to me to really begin to kick in at a higher level,
10 they bought a management software package in 2001
11 and they appeared to be gearing up to expand their
12 business. It's called vertical integration. They
13 were expanding their business.

14 MR. HARSCH: Mr. Hearing Officer, I
15 keep asking pretty simple questions.

16 HEARING OFFICER HALLORAN: You know, I
17 think in this case, he's done a good job, he
18 explained his answer, so objection overruled.

19 BY MR. HARSCH:

20 Q. Continue.

21 A. Well, as I was saying, beginning of my
22 analysis of the type of competitiveness in this
23 industry, I began to see some communication from the
24 owners that in 2001 they bought a high tech software

1 system to help manage their production.

2 And then from that point on I
3 began to see several articles about the -- that what
4 they were doing was attempting to do vertical
5 integration. That's why in '03 they bought the
6 other facility in Michigan. They were beginning to
7 add not only additional customers, but they were
8 trying to get products on all sides of their
9 activities so that it was kind of like a one-stop
10 shop where a company could come in and not only
11 get -- they could get the bags produced, they could
12 get the coloring, the layering put on and it was
13 kind of a one-stop shop is what this vertical
14 integration that was discussed in the articles in
15 the professional magazines. And that was beginning
16 to take effect in 2001.

17 HEARING OFFICER HALLORAN: It looks
18 like Mr. Harsch wants to ask another
19 question.

20 BY MR. HARSCH:

21 Q. Those articles you're reading were
22 2001, '2, '3 time frame?

23 A. Yes.

24 Q. My question was at the time this rule

1 became effective in 1997 was there -- and between
2 the time of 1997 and the time Packaging made the
3 decision to buy the RTO unit that they bought, are
4 you aware of any change in the competitive nature of
5 the business between 1997 and 2003 I believe was my
6 question?

7 A. No. Prior to 2001, I really didn't
8 pick up on any.

9 Q. Okay. In all the cases that you've
10 been asked to participate in by the Illinois EPA
11 lawyers and the AG lawyers, has there always been an
12 economic benefit calculated?

13 A. Yes.

14 Q. What is the lowest economic benefit
15 penalty you've ever calculated?

16 A. I think I've done probably 25 cases
17 over the ten years. I would say probably, you know,
18 they ranged from 70,000 to a million dollars,
19 somewhere in there, all along that range, maybe
20 slightly lower than 70,000. Usually, they settle if
21 they're, you know, much lower than that.

22 Q. Are you aware of the WCI reported case
23 in Ohio regarding the question on whether or not
24 risk-free rates are used or not used?

1 A. Yes, I've heard of that one.

2 Q. That's a case where risk-free rates
3 were, in fact, used and upheld by the court?

4 A. I'm not sure if that -- there's cases
5 on -- there's more cases on the weighted average
6 cost of capital side than on the risk-free rate, but
7 I don't know them all. But I know there is more
8 cases on the WACC side than there is on the
9 risk-free. But I know there's one or two that do
10 say you could use the risk-free.

11 Q. So it's not a definite issue?

12 A. It is for me. I totally disagree with
13 it.

14 Q. Fine. How many presses has Packaging
15 Personified added to the Carol Stream facility since
16 it added press six in 2003?

17 A. I don't know.

18 Q. Is it your understanding that
19 Packaging Personified was first a printing operation
20 and then added capacity in your vertical
21 integration?

22 A. That's what I began to pick up on,
23 that they specialized more in printing but then they
24 began to vertically integrate and then that's one of

1 the reasons they bought the Michigan Sparta plant,
2 to continue that management style, that management
3 approach.

4 Q. Are you familiar with Section 42H of
5 the Illinois Environmental Protection Act?

6 A. Yes.

7 Q. And that references the lowest cost
8 alternative, does it not?

9 A. Correctly applied, yes.

10 Q. It references lowest cost alternative
11 in calculating economic benefits?

12 A. Yes.

13 Q. Have you calculated an economic
14 benefit, been asked to, for any other flexographic
15 printers?

16 A. Not that I'm aware of.

17 Q. Would anyone else at the Agency have
18 calculated an economic benefit for any flexographic
19 printers in Illinois without you being aware of it
20 since you're the manager of the section?

21 A. I don't understand the question.

22 Q. Do you know if the Illinois
23 Environmental Protection Agency has sought economic
24 benefit from any other flexographic printer?

1 A. I'm not aware. I don't believe I'm
2 aware.

3 Q. Would you have been aware of it had
4 they sought such an economic benefit penalty from
5 any other flexographic printer?

6 A. I doubt it. I kind of -- they just
7 give me the information and I pretty much just do my
8 analysis to a large extent.

9 Q. You're not aware of all the economic
10 benefit requests, as the manager of that section,
11 that Illinois EPA seeks?

12 A. Well, there's a lot of economic
13 benefit activity that goes on in the division of
14 legal counsel that -- because 99 percent of the
15 cases get settled, so I'm only involved on a small
16 percentage of the cases. So, yeah, I'm not aware of
17 every case that goes on.

18 Q. And is it your testimony that you're
19 not aware of any that have been imposed by the
20 Illinois EPA? You're personally not aware of any?

21 A. I don't understand the question. Any
22 what? -

23 Q. Any case where the -- are you aware of
24 any -- are you, personally, as the manager of the

1 economic benefit group, whatever it's called, aware
2 of any instance where the Illinois Environment
3 Protection Agency has sought an economic benefit
4 penalty from any other flexographic printer?

5 A. No. I don't work that closely with
6 our attorneys, so I --

7 MR. HARSCH: It's a simple yes or no
8 answer, Mr. Hearing Officer.

9 BY THE WITNESS:

10 A. No. No, I'm not aware.

11 BY MR. HARSCH:

12 Q. So your answer is, no, you're not
13 aware?

14 A. Yes. That's correct. I'm not aware
15 of any other economic benefit activities associated
16 with this printing area here.

17 MR. HARSCH: I have no further cross
18 examination questions.

19 HEARING OFFICER HALLORAN: Do you want
20 to take a short break?

21 MS. WHEELER: No. I'm ready. I only
22 have a couple questions.

23 HEARING OFFICER HALLORAN: Okay.

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REDIRECT EXAMINATION

BY MS. WHEELER:

Q. Mr. Styzens, how are you assigned cases to do economic benefit analyses on?

A. I usually get a letter or an e-mail form letter from the chief legal counsel requesting my assistance.

Q. And you said the entire time that you've been doing this you've analyzed 25 different cases?

A. About 25 in ten years, yes.

Q. In ten years. So it's your understanding that there are many hundreds more that have been referred for violations to the Attorney General's Office?

A. Yes.

Q. That you're not involved with?

A. Correct.

Q. And you're not aware of what the penalties are and what type of cases they are?

A. No.

Q. Directing your attention to the BEN Manual in the Respondent's exhibits, Mr. McClure's expert report, did you rely on the statement that

1 the best evidence of what the violator should have
2 done -- this is under 3.9 -- it's the paragraph
3 above the paragraph that you just quoted to
4 Mr. Styzens earlier. That the best evidence of what
5 the violator should have done to prevent the
6 violations is what it eventually did to achieve
7 compliance. Did you rely on that when you made your
8 analysis?

9 A. Yes.

10 Q. Did you also rely on the statement in
11 the BEN Manual that this rule is instructive in
12 those cases where the violator may appear to be
13 installing a more expensive pollution control system
14 that the EPA staff believes is necessary to achieve
15 compliance, in such situations the proper cost
16 inputs in the BEN Model are usually still based on
17 the actual -- or actual more expensive system being
18 installed, this is because the EPA should not second
19 guess the business decisions of a violator, a
20 violator often will have sound business reasons to
21 install a more expensive compliance system, e.g., it
22 may be more reliable, easier to maintain, have a
23 longer useful life; did you rely on that statement?

24 A. Yes. And that's amplified in the

1 Federal Register. And so that's what my point is,
2 you cannot just rely on that manual. You have to
3 look into, like, the Federal Register and some of
4 the other areas to get an understanding of -- again,
5 a case-by-case basis. That's your bottom line. You
6 have to look at each case.

7 MS. WHEELER: I have nothing else.

8 HEARING OFFICER HALLORAN: Thank you,
9 Ms. Wheeler. Mr. Harsch.

10 MR. HARSCH: No.

11 HEARING OFFICER HALLORAN: Thank you.
12 You may step down, Mr. Styzens. Thank you so
13 much. Let's go off record for a minute.

14 (Whereupon, after a short
15 break was had, the
16 following proceedings
17 were held accordingly.)

18 HEARING OFFICER HALLORAN: Back on the
19 record. The Complainant has rested in its
20 case in chief.

21 We have now Mr. Harsch and
22 Packaging Personified. Mr. Harsch.

23 MR. HARSCH: My first witness will be
24 Dominic Imburgia.

1 (Witness sworn.)

2 WHEREUPON:

3 DOMINIC IMBURGIA

4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HARSCH:

8 Q. Dominic, would you please state your
9 name full name for the record?

10 A. Dominic Imburgia.

11 Q. And were you the founder of Packaging
12 Personified?

13 A. Yes, I was.

14 Q. Briefly, can you provide the Board
15 with a little bit of your educational and work
16 background prior to founding Packaging Personified?

17 A. Well, I worked for Sears when I got
18 out of high school, went to college nights, got my
19 degree from Elmhurst in business. I continued
20 working at Sears. I used to buy all their packaging
21 for them. From there, I decided I wanted to open my
22 own business and went into the packaging business.

23 We founded Packaging Personified.

24 It's a little company -- It's a small, little

1 company that myself and my partner had started. I
2 brought my sons into that business and we've been
3 trying to grow it since and maintain it.

4 Q. It's a family-owned business?

5 A. A family-owned.

6 Q. And your sons are Joseph and Dan?

7 A. Joseph and Dan are in the business. I
8 have another son, of course, that isn't. Joseph
9 runs our plant operations. He's very familiar with
10 all of those things out there. And my son Dan is in
11 sales. He does all of the sales for us.

12 Q. I've opened up the Agency's exhibit
13 book two. Do you need your glasses?

14 A. Yes, I will. Can I get them?

15 (Brief pause.)

16 BY MR. HARSCH:

17 Q. I've opened it up to Exhibit 4, which
18 is the July 2nd, 1997 letter that you heard about
19 earlier that supposedly was sent to you.

20 I had a discussion with counsel.
21 We have an agreement that that is the transmittal
22 letter, but the actual package the Agency sent out
23 was an informational package that would have been
24 more materials.

1 MS. WHEELER: It was a packet attached
2 to it that we don't have a copy of.

3 BY MR. HARSCH:

4 Q. Dominic, to the best of your knowledge
5 and belief, before today, have you ever seen that
6 letter?

7 A. Never, never. And if I did see that
8 letter, I would have responded to it.

9 Q. Before I get into that, if a letter
10 from a governmental agency comes to Packaging
11 Personified in 1997, would it have found its way to
12 your desk?

13 A. I certainly believe it would have,
14 yes.

15 Q. And if it wouldn't have found your
16 desk, whose desk would it next have gone to?

17 A. It would have gone to Joe.

18 Q. And then I think I interrupted you and
19 you were just saying what you would have done if you
20 would have gotten that letter?

21 A. Well, I mean, obviously, we did that
22 when we found out we were -- we got inspected. We
23 would have called a consulting agency and a lawyer
24 and tried to do all those things which are necessary

1 to comply.

2 And we thought that's what we were
3 doing all along. We just never got that letter.
4 I'm sorry. I wish we would have. It would have
5 caused a lot less problems if we had it.

6 Q. After the inspection that occurred in
7 October of 2005 -- excuse me, October of 2001, can
8 you describe what Packaging Personified did?

9 A. Well, actually, I wasn't there at the
10 time of inspection. I got a call. I said, well,
11 what's it all about. After getting back the next
12 day, we learned -- we had an inspection, we were in
13 violation of a couple things.

14 I consulted with both my sons and
15 my partner and we said, well, we've got to do
16 whatever we have to do, so we got a consulting
17 group. We called Rich Trzupek's group, as a matter
18 of fact, and we called a lawyer to decide where we
19 needed to go, what we needed to do and how we needed
20 to handle it.

21 Q. And that was before you received any
22 violation notice?

23 A. Absolutely.

24 MR. HARSCH: No further questions.

1 HEARING OFFICER HALLORAN: Thank you,
2 Mr. Harsch. The People.

3 MS. WHEELER: Yes, your Honor.

4 CROSS EXAMINATION

5 BY MS. WHEELER:

6 Q. Mr. Imburgia, you just said that after
7 the inspector was there and there was an inspection,
8 you found out you were in violation of a couple of
9 things?

10 A. I was told that -- I don't know
11 exactly the timeline. I recall being told we were
12 out of compliance.

13 Q. And did you know at that time when you
14 were first told that it was press four that was out
15 of compliance?

16 A. No, I don't recall that.

17 Q. And how long have you been in the
18 business as Packaging Personified in Carol Stream?

19 A. To date?

20 Q. Yes.

21 A. I believe it's 34 years.

22 Q. And prior to 2001 and this inspection
23 you had no idea that you needed to comply with the
24 Clean Air Act --

1 A. Absolutely not.

2 Q. -- regulations?

3 A. We've done everything we needed to do
4 to comply, at least we think we have, as of now. I
5 don't know why I would have responded any different
6 if I had found out earlier.

7 Q. The letter that's Exhibit 4 there in
8 front of you, that is the proper address to your
9 company at that time frame?

10 A. Yes, it is.

11 Q. Okay.

12 A. I don't know what to say to that. If
13 I may just add a comment? You know, we've mailed a
14 couple deposits to the banks and they didn't get
15 them for five, six weeks and then we had to cancel
16 checks. So, you know, I guess the mail is certainly
17 a possibility, too.

18 Q. Okay. And you never heard about this
19 letter from any of your competitors?

20 A. Absolutely not.

21 Q. And you are in a very competitive
22 business, are you not?

23 A. Yes, we are.

24 Q. And, in fact, you compete nationally,

1 don't you, now?

2 A. We compete across the country, yeah.

3 Q. How many customers do you have?

4 A. I would say -- you know, I would like
5 to think we have as many as the gentleman up here
6 talked about earlier. He gave us a real good
7 picture of how aggressive we were and how we were
8 growing and putting presses all over the place. I
9 would like to know the guy who owns that company,
10 quite frankly. But we probably have about 200
11 customers.

12 Q. And you have about 200 employees?

13 A. Not in Carol Stream we don't.

14 Q. How many in Carol Stream?

15 A. About 100.

16 MR. HARSCH: Counsel, I'm going to
17 bring his son on as the plant manager and go
18 through all those items in terms of the
19 number of employees, that kind of stuff, if
20 that makes more sense.

21 THE WITNESS: Well, he would know more
22 of what's happening on a day-to-day basis
23 than I do today.

24

1 BY MS. WHEELER:

2 Q. Right. But you knew about what was
3 going on in 1997 and 2001?

4 A. Well, he was pretty much involved as
5 our plant manager back then, too.

6 Q. But you're the one, Mr. Imburgia, who
7 makes the decisions when it comes to spending big
8 money, right?

9 A. I make those decisions, but I make
10 them with everyone involved in the management group.

11 Q. But you're the final decision-maker?

12 A. Well, I'm the bigger stockholder. I
13 guess you could say I'm the final.

14 Q. This is your business?

15 A. Well, I like to think so, but some
16 people might disagree with you.

17 Q. People that own stock?

18 A. Right.

19 Q. You've been the president since this
20 company was started, haven't you?

21 A. Yes.

22 Q. You've been the majority stockholder
23 since this company was started?

24 A. Yes.

1 Q. And despite the fact that it's labeled
2 a family business, your partner is Mrs. Muccianti,
3 right?

4 A. Yes.

5 Q. And she is not family?

6 A. No. Well, she likes to think she is.

7 Q. It is a corporation, though, right?

8 A. Yes.

9 Q. It's not a partnership?

10 A. No.

11 Q. It's not a sole proprietorship?

12 A. No.

13 MS. WHEELER: I have no further
14 questions at this time.

15 HEARING OFFICER HALLORAN: Thank you,
16 Ms. Wheeler. Mr. Harsch.

17 MR. HARSCH: No.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Imburgia. You may step down.

20 MR. HARSCH: The general manager.
21 Please swear the witness in.

22 (Witness sworn.)

23

24

1 WHEREUPON:

2 JOSEPH IMBURGIA

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HARSCH:

7 Q. Would you please state your full name
8 for the record?

9 A. Joseph Dominic Imburgia.

10 Q. And, Joseph, again, very briefly, can
11 you please describe your relevant educational and
12 work experience?

13 A. Started working part-time in the
14 business prior to graduating college. I went to
15 Eastern Illinois, a couple credits short of a
16 bachelor's in science degree from Eastern Illinois.
17 I've been working full-time at Packaging Personified
18 ever since.

19 Q. And what is your present position at
20 Packaging?

21 A. General manager.

22 Q. And prior to general manager, what was
23 your position?

24 A. I've been both plant manager and prior

1 to that sales, salesperson.

2 Q. In the 1997 time frame what was your
3 position?

4 A. Plant manager.

5 Q. If I direct your attention, again, to
6 the exhibit that's in front of you, the '97 letter,
7 to the best of your knowledge and belief, have you
8 ever seen that letter before?

9 A. No, I have not.

10 Q. And had that letter arrived at
11 Packaging, as the plant manager, would it normally
12 be expected to end up on your desk as well as your
13 father's?

14 A. Yes. Most likely, my desk prior to
15 his and I would bring it to him.

16 Q. And, in fact, is your office staff
17 given any directions with respect to mail from the
18 government?

19 A. Yeah. It would go directly to an
20 owner, there are some areas that would be directed
21 to operations and, otherwise, to my father.

22 Q. As the plant manager and now general
23 manager have you had overall responsibility for
24 compliance with environmental regulations --

1 A. Yes, I do.

2 Q. -- since you became aware of the
3 environmental regulations?

4 A. Yes, I do.

5 Q. Do you rely on employees to maintain
6 the appropriate documentation and records required
7 by the rules?

8 A. Yes, with support from any consulting
9 services that we would hire on.

10 Q. And, again, you rely on -- you've
11 relied on employees for actually maintaining the
12 records?

13 A. Yes.

14 Q. Who is that person now?

15 A. Today, it's Tim Piper.

16 Q. And before Tim Piper who was it?

17 A. A gentleman named Alex Wilson.

18 Q. Can you please describe in 2001
19 generally how many presses you had present?

20 A. In 2001, we would have had four
21 presses.

22 Q. And are those presses of different
23 types?

24 A. Yes. There's two presses, which we

1 consider inline presses, meaning they're smaller,
2 they run in conjunction with an extruder which
3 allows us to run water-based inks or compliant inks.
4 And there's two off-line presses that run
5 solvent-based inks.

6 Q. And those would have been press four
7 and press five?

8 A. Correct.

9 Q. Press four had no type of control at
10 all?

11 A. No.

12 Q. And press five was a regenerative --
13 had a regenerative oven on it?

14 A. Yes, it did.

15 Q. Is it possible to run water-based inks
16 on a press like press four and press five?

17 A. We have made some attempts to do so
18 and unsuccessfully to meet the quality expectations
19 of our customers.

20 (Whereupon, a discussion
21 was had off the record.)

22 BY MR. HARSCH:

23 Q. I have been corrected. I think I
24 referred to the oven on press five as regenerative.

1 It's recirculating?

2 A. Yes. I understood the question.

3 Q. So my question should have been
4 recirculating, not regenerative.

5 At the time of the October 2001
6 inspection, the inspection report references that
7 Dan, your brother, showed the inspector around.
8 What does that tell you about who was present at the
9 plant on that day?

10 A. It means that I wasn't present or my
11 father wouldn't have been present. Myself or my
12 father, Dominic Imburgia, were not present at the
13 facility at that point in time.

14 Q. At that point in time your brother was
15 responsible for sales?

16 A. Sales and administration, front
17 office.

18 Q. And he had no responsibility for what
19 records you maintained?

20 A. None whatsoever.

21 Q. In October of 2001 did Packaging
22 Personified maintain material safety data sheets
23 from your main suppliers?

24 A. Yes, we did.

1 Q. And can you describe what kind of
2 records you maintained in terms of production runs?

3 A. With regards to production runs, we
4 track our output of sold products to customers in
5 the form of either pounds or footage or bags on our
6 production equipment.

7 Q. And you would have had in 2001 those
8 kinds of daily production records?

9 A. Yes. They would go from a small paper
10 that's filled out on the floor and then put into an
11 Access database.

12 Q. Has Packaging Personified always used
13 water-based inks on presses one and two?

14 A. To the best of my recollection, yes.

15 Q. How long do your normal print jobs
16 last on presses one and two?

17 A. On presses one and two, because
18 they're limited based on the speed of the extruder,
19 they might last a day.

20 Q. Do you currently operate both press
21 one and press two?

22 A. No. We operate press one. Press two
23 hasn't been in operation for a period of time.

24 Q. In fact, how long a period of time is

1 it, years?

2 A. Several years.

3 Q. Was press four -- how many color press
4 was press four?

5 A. It was a six-color press.

6 Q. And would you have had material safety
7 data sheets for the inks and solvents that you used
8 in press four in October of 2001?

9 A. Yes.

10 Q. And you would have had the same kind
11 of paper job records for the jobs you produced on
12 press four?

13 A. Yes.

14 Q. Press five was a six-color solvent
15 recirculating press?

16 A. Yes.

17 Q. Would you have had material safety
18 data sheet for the inks and solvents you used in
19 press five?

20 A. Yes, we would.

21 Q. And you would have had, again, the
22 same paper records?

23 A. Yes.

24 Q. You also had purchase records of your

1 inks and solvents, correct?

2 A. Yes, we do.

3 Q. Was press five always a recirculating
4 press?

5 A. Yes, it was.

6 Q. Is it physically possible to operate a
7 recirculating press without recirculation?

8 A. I don't believe so. I mean, I'm not
9 an engineer as far as designing a piece of
10 equipment, but to my knowledge of how that piece of
11 equipment would operate, I don't believe it would
12 have been able to be avoided.

13 Q. What is the purpose of the
14 recirculation?

15 A. The purpose for the recirculation on
16 that piece of equipment was to reduce the amount of
17 gas usage in operating that piece of equipment. To
18 dry the inks, you have to use -- you have to get the
19 air up to a fairly high temperature, and by
20 recirculating you can burn VOCs to generate the heat
21 as opposed to having to burn natural gas.

22 Q. So it's an energy -- it was purchased
23 for an --

24 A. Energy efficiency purposes.

1 Q. When was the first time that Packaging
2 Personified and you personally became aware of the
3 environmental regulations that applied to
4 flexographic printers and your operations?

5 A. I can't say the date off the top of my
6 head, but what I can say is that I believe there was
7 an inspection, I was pulled into a meeting, I
8 believe that occurred in 2001.

9 Q. That was the inspection with your
10 brother?

11 A. Yes.

12 Q. What steps, if any, did Packaging
13 Personified take immediately following that
14 inspection?

15 A. Given the gravity of the situation, my
16 father was involved in identifying some consulting
17 services, but we did go out and hire some consulting
18 services and also brought on legal counsel to give
19 us information on how to come into compliance and
20 address the concern.

21 Q. And did Packaging Personified provide
22 any direction to the environmental consultant?

23 A. I mean, we weren't in a position to
24 provide a lot of direction, no.

1 Q. And that environmental consultant is
2 Rich Trzupek?

3 A. Yes.

4 Q. And that's been throughout no matter
5 where he's been working, whether it's Huff & Huff or
6 Air Solutions or for himself or --

7 A. Correct.

8 Q. -- or Mostardi Platt?

9 A. Correct. That's the only contact I'm
10 aware of that we've had with regards to those
11 consulting services.

12 Q. And beginning with his first
13 involvement is it your understanding that Huff &
14 Huff through -- or Rich Trzupek at Huff & Huff had
15 responsibility for assisting you and filing all the
16 required permit applications?

17 A. Yes.

18 Q. And all the required past reports?

19 A. Yes, absolutely.

20 Q. And then assisting you, Packaging
21 Personified, in maintaining -- in developing a
22 record-keeping system that satisfied the Agency?

23 A. Yes, he did.

24 Q. Following the evaluation by Rich

1 Trzupek, did he provide an analysis of what he
2 thought your compliance status was?

3 A. Yes.

4 Q. And what was your understanding of the
5 ability of the four presses to meet the substantive
6 regulatory requirements?

7 A. My understanding was that press five
8 was compliant. Initially, that was a question as we
9 brought up the fact that it recirculated. And I
10 believe substantive testing had been done, but we
11 believed that to be compliant, the two inline
12 presses, being water-based, we believed to be
13 compliant and press four to be non-compliant.

14 Q. Did Packaging Personified ultimately
15 get a violation notice in February, if you recall,
16 of 2002, as a result of that inspection?

17 A. I believe we did get a violation
18 notice. I don't know the exact date, but, yes, it
19 was my understanding we received a violation notice
20 after that inspection.

21 Q. And did you participate along with
22 your father in meetings with the Illinois
23 Environmental Protection Agency and Rich Trzupek in
24 Springfield to discuss the violation notice?

1 A. Yes, I did.

2 Q. It's a long time ago. Do you recall
3 Rich Trzupsek bringing up and your lawyer bringing up
4 the issue of an adjusted standard or other relief
5 for Packaging Personified similar to that that
6 Formel and Vonco and Bema may have gotten?

7 A. I don't recall specifically. I do
8 know that it had been discussed that other companies
9 that did what we did had asked for some kind of
10 relief in discussions with Rich.

11 Q. And is it your understanding or do you
12 recall that the Agency told you they would not
13 support such relief?

14 A. Yes. It's my understanding that we
15 were not considered for the same type of treatment.

16 Q. During that time period did you, as
17 plant manager, consider various options for how you
18 might comply with the substantive requirements for
19 press four?

20 A. Yes, we did.

21 Q. And what were those options?

22 A. One of the options was to shut down
23 press four and to switch work over to the compliant
24 piece of equipment, press five.

1 That would have required us to go
2 from a five-day schedule, three shifts on both
3 presses, to operating a seven-day schedule on the
4 compliant press 24 hours. That was one option.

5 Another option -- because if I'm
6 asked to handle that type of a project, I would want
7 to know all of the potential options. One option
8 was a catalytic oxidizer to control the press four.

9 Another option would have
10 considered a regenerative thermal oxidizer and even
11 as far as some alternative options as far as
12 biomass, whatever, you know, options to control that
13 piece of equipment, as well.

14 Q. Did you look at both new and used
15 equipment?

16 A. I didn't look specifically at the used
17 equipment. That option was brought to me.

18 Q. By your father?

19 A. By my father.

20 Q. And that would have been used
21 equipment from a vendor of control equipment?

22 A. Yes.

23 Q. As opposed to used equipment from your
24 handy-dandy corner used equipment sales lot?

1 A. There's plenty of used equipment
2 salespeople as well as refurbished units.

3 Q. Did you and Packaging Personified make
4 any decisions regarding the feasibility of
5 installing simply add-on controls just for press
6 four?

7 A. Yes.

8 Q. And what was your conclusion?

9 A. The conclusion was that it would be a
10 better solution to shift production to press five.

11 Q. And did you, in fact, do that?

12 A. Yes, we did.

13 Q. Do you recall when the last printing
14 job was on press four?

15 A. I apologize. I don't recall the exact
16 date. I do know that that's something that has been
17 discussed and I've seen paperwork submitted with
18 regards to that, so I know that date is available.
19 I just don't recall it off the top of my head.

20 Q. The shift of the work that was
21 produced on press four and press five, there's been
22 testimony that you've heard by Mr. Bloomberg about
23 whether or not the Agency accepted the test that
24 Mr. Trzupsek performed or not, that engineering

1 evaluation?

2 A. Uh-huh.

3 Q. Would simply the shift of production
4 from press four to press five in and of itself
5 result in less solvent emissions to the atmosphere?

6 A. Absolutely.

7 Q. And why?

8 A. Well, because press five had a
9 recirculating oven that used VOCs to generate to --
10 burn to generate heat to dry the ink.

11 Q. Have you had reason to analyze the --
12 in retrospect, the shift of production from press
13 four to press five in terms of any potential
14 savings?

15 A. Yes, we did take a look at it. And,
16 actually, there was a savings shifting from two
17 presses, five days, three shifts, which was
18 six shifts of personnel, to seven days, 24 hours.
19 We went to what's called a continental shift. It's
20 four shifts of people. We run that same shift
21 schedule in our extrusion area, which also requires
22 a seven-day, 24-hour operation. So the building was
23 already open because of the other department, and on
24 that schedule we ran four shifts instead of six.

1 We also saved shutdown and
2 start-up time, which can require a fair amount of
3 cleaning.

4 Q. Let's assume the records -- I think
5 they show that you shut the press down in December
6 of 2002. Following that time period can you
7 describe what additional discussions -- or in that
8 time period -- Packaging was having internally with
9 respect to potential for installing a new press?

10 A. Yes. Business in our industry had
11 shifted to eight-color press. Eight-color presses
12 had been introduced to our segment of the
13 marketplace and customers had been -- there were
14 more customers changing their designs to accommodate
15 eight-color printing, a more sophisticated printing
16 and, you know, we were being -- would not have the
17 access to that customer base.

18 Q. What was the ultimate -- what
19 scenarios did you give?

20 A. Well, we at that point in time felt we
21 needed to have eight-color capacity to be able to
22 expand the business and to grow. We felt from the
23 feedback we had gotten from our sales staff that we
24 had access to business if we had eight-color

1 capacity that would be, you know, appropriate
2 business for our situation.

3 At that time we were still
4 receiving advice from counsel and from Rich Trzupsek
5 regarding the open -- or lack of settlement of this
6 particular case and it was thought a good idea to
7 control that piece of equipment in a conventional
8 way that would make sense to the EPA, at the same
9 time include press five in that same control device
10 because, again, that type of compliance would make
11 sense to the EPA.

12 That's also one of the reasons
13 that the biomass option was shot down internally at
14 Packaging Personified because, you know, I have a
15 tendency to, like, either add more energy efficient
16 or simpler ways of getting things resolved and not
17 all of them were considered viable because of, you
18 know, the ability of the EPA to understand them and
19 be comfortable with them.

20 Q. Could Packaging Personified have
21 continued to operate press five 24/7 and produce all
22 of the existing six-color press business that you
23 had?

24 A. Absolutely.

1 Q. Following the installation of press
2 six -- strike that.

3 Is press six, in your own mind, a
4 replacement press for press four?

5 A. Absolutely not.

6 Q. And why not?

7 A. It's a completely different piece of
8 equipment that allowed us to access a completely
9 different market. It was bought and installed to
10 grow the business. And press five was a newer,
11 faster piece of equipment that had already absorbed
12 all of the work off of press four.

13 Q. What conclusion did Packaging
14 ultimately make with respect to the size of the
15 control device that it was going to install on the
16 new press six and hook up already press five?

17 A. That we needed room to continue to
18 expand the business and that we wanted to have
19 capacity within that unit to handle at least a third
20 press.

21 Q. Do you have any idea why your
22 attorneys back then or even your consultant would
23 have called press six a replacement press?

24 A. Well, in discussions it was proposed

1 as what we called a grand, you know, compliance plan
2 where we were showing this very large effort and
3 willing to do anything to comply at the time.

4 We wanted to say, you know, look,
5 we're going overboard, we're doing beyond what would
6 potentially be expected. And that was the concept
7 discussed as far as pushing that idea forward.

8 Q. And, again, your consultant had told
9 you that based on his evaluation test that, in his
10 opinion, press five complied with the substantive
11 requirements?

12 A. Absolutely.

13 Q. There was mention this morning in
14 testimony about ATUs and credits that Packaging
15 Personified should possess, is going to need to
16 possess because of certain emissions back in 2000,
17 2001 and 2002. Are you generally familiar with that
18 concept?

19 A. Generally, yes.

20 Q. And have you recently directed your
21 consultants to essentially become involved in the
22 ERMS program and put that issue behind us once and
23 for all?

24 A. Yes.

1 Q. And is it your understanding they've
2 done so and submitted information recently to
3 Illinois EPA?

4 A. Yes, they have. That's my
5 understanding.

6 Q. Who are some of the direct competitors
7 that you compete against in the Chicagoland area?

8 A. Bema, Formel Industries, Vonco,
9 Popernik.

10 Q. You heard Mr. Styzens testify that he
11 used a benchmark figure of \$86,000 for an operating
12 cost for an RTO unit that he had been given by
13 Mr. Bloomberg that Formel had operated?

14 A. Yes, I heard that testimony.

15 Q. And you also heard him reference the
16 fact that the Agency wasn't provided with operating
17 costs for the RTO unit that you did install. How
18 many gas meters do you have at Packaging
19 Personified?

20 A. We have one main supply gas line.
21 There's a meter on that line.

22 Q. And how many electric meters do you
23 have?

24 A. One.

1 Q. Do you have any separate ability to
2 measure the actual amount of gas that the RTO unit
3 uses?

4 A. No.

5 Q. Do you have any means of measuring the
6 amount of electricity that the RTO uses?

7 A. No, we do not.

8 Q. You've had experience now operating
9 that RTO for four or five years?

10 A. Yeah. I believe it was installed
11 sometime in 2003, end of 2003, I think.

12 Q. Can you describe in general terms how
13 much maintenance and oversight that unit requires?

14 A. It requires very little oversight.
15 It's basically a big tin can that has a blower,
16 exactly one shuttle arm that shifts the air flow
17 from one chamber to another. Inside the chamber
18 there's ceramic block. The ceramic block heats up
19 and stores heat.

20 Because of the amount of VOCs that
21 are thrown into it, it has a tendency to overheat.
22 When that side gets too hot, it just shifts the air
23 to the other side and continues that cycle back and
24 forth.

1 We've had one major issue with the
2 piece of equipment and that is that for that shuttle
3 arm to work, it has a compressed air attachment,
4 there's condensation in our compressed air and
5 during the winter one year that compressed air line
6 froze. We repaired that.

7 Aside from that, I'm not aware of
8 any maintenance required on that piece of equipment
9 that would have been something I was required to
10 then approve. I'm required to approve any
11 maintenance purchases that are over \$1,000.

12 Q. Has Packaging recently instituted a
13 program to track costs?

14 A. To track costs on the piece --

15 Q. To track costs to certain specific
16 pieces of equipment?

17 A. No.

18 Q. Okay. Have you had reason to
19 evaluate -- following installation of the RTO unit,
20 did Packaging have reason to look at what its
21 utility costs were before and after?

22 A. No.

23 Q. Have you looked at what the amount of
24 gas -- what impact, if any, it would have had in gas

1 consumption?

2 A. Yes, I did do a brief analysis. I
3 tried to take the years of 2003 and 2004. We, of
4 course, used natural gas to heat our building and
5 natural gas is also used to run the ovens on the
6 presses.

7 So to eliminate any gas usage that
8 would have gone to, you know, heating and cooling,
9 which is very variable year to year, I tried to look
10 at only summer months. And then I also did a
11 comparison including the amount of gas used compared
12 to the amount of production garnered off of the
13 pieces of equipment and came to a numbers that
14 indicated there was no change in cost at all.

15 Q. Do you have an opinion as to why that
16 would occur?

17 A. Yes. When we researched the piece of
18 equipment and decided to buy, our goal was to go out
19 and buy the most effective technology. And that's
20 part my of my responsibility in the organization.

21 In doing so, I tried to understand
22 what the operating costs potentially could be and --
23 of the different options. And in doing so, we
24 bought a unit that would be what's called

1 self-sustaining. Self-sustaining means that, you
2 know, it requires natural gas, it's fired off of
3 natural gas to start it up, to bring it up to
4 temperature.

5 Once it's up to a minimum
6 destruction temperature, then you can start running
7 flowing air into it from the presses. The amount of
8 VOCs in that air will burn just like they burned in
9 the ovens. And that is how the unit is actually
10 continued or maintained. It's called
11 self-sustaining.

12 Q. Do you have experience with a similar
13 device anywhere else?

14 A. Yes. I was involved in the
15 installation of an RTO from the same company, a
16 company called Ship & Shore, in another facility.

17 And based on the sizing of the
18 unit, again, using similar modeling, we actually had
19 to put additional control devices to reduce the
20 amount of gas flow at the pilot level because the
21 pilot level of gas was causing the unit to overheat
22 when it was combined with the VOCs that were being
23 sent to the unit. Again, another indication that it
24 was a self-sustaining unit.

1 Q. As general manager and plant manager,
2 are you generally familiar with those pieces of
3 process equipment that are electrically driven?

4 A. Yes, I am.

5 Q. Do your extruders use a lot of
6 electricity?

7 A. Yes, our extruders use a great deal of
8 electricity. They're the main load of electricity
9 in our facility.

10 Q. And how does the RTO in terms of --
11 you said it had one blower and an actuating arm?

12 A. Yeah. It has one blower. The
13 actuating arm is actually operated based on the
14 compressed air. The one blower is run off of an
15 electric motor. You know, to compare, the one press
16 has four large blowers.

17 The extruder, which more than
18 doubles the electrical use of an entire press, might
19 have a single blower on it. It's an insignificant
20 load electrically.

21 Q. Do you believe that your operating
22 costs, in actuality, approach anything close to the
23 figures Mr. Styzens put in his calculation?

24 A. Is that the \$86,000 number?

1 Q. Yes.

2 A. No. Not on the same planet.

3 Q. Do you know are you responsible for
4 the purchase of gas at the plant?

5 A. Yes.

6 Q. And can you provide what your natural
7 gas purchase price has been in general?

8 A. Unfortunately, the natural gas market
9 has become very volatile. Most recently, our
10 natural gas price is at two-and-a-half cents a
11 therm. And that was something I actually found out
12 going outside and refreshing my memory so I can
13 speak intelligently.

14 There have been -- over time I
15 believe that we are somewhere between five and seven
16 cents a therm in natural gas. That's considered,
17 more recently, expensive gas. And that was after a
18 lot of electrical power-generating plants started
19 firing off of natural gas. And that's in the
20 late -- probably early 2000s, late '90s when that
21 started.

22 Q. The cost estimate that was provided to
23 move press four, where did that come from?

24 A. I believe that was based on internal

1 personnel and some freight charges. I'm not
2 infinitely familiar -- I'm not directly familiar
3 with that.

4 Q. Did you use your own people to assist
5 in that move?

6 A. Yes, we did.

7 Q. And just so we understand, is the
8 press like the size of that table or is it the size
9 of a car or a small truck, press four?

10 A. It's the size of an ice cream truck,
11 possibly.

12 Q. Okay.

13 MR. HARSCH: Can I just have a second?

14 HEARING OFFICER HALLORAN: Yes, you
15 may, Mr. Harsch. We can go off the record
16 for a second.

17 (Brief pause.)

18 HEARING OFFICER HALLORAN: We're back
19 on the record.

20 MR. HARSCH: I have no further
21 questions.

22 HEARING OFFICER HALLORAN:

23 Ms. Wheeler, cross.

24 MS. WHEELER: Thank you, Mr. Halloran.

CROSS EXAMINATION

1

2 BY MS. WHEELER:

3 Q. Mr. Imburgia, that's how you say it,
4 right, Imburgia?

5 A. I've heard it a lot of ways, but,
6 yeah, that's pretty good.

7 Q. You said you weren't present for the
8 first inspection by the Illinois EPA in October
9 of 2001?

10 A. No.

11 Q. Were you present at the next
12 inspection, the second inspection by the Illinois
13 EPA?

14 A. I believe I was. I'm not positive. I
15 would have been not the front person on that because
16 we would have had -- most likely had Rich there.

17 Q. I believe Mr. Harsch's questions were
18 directed to the fact that records were not produced
19 at that first inspection by your brother, Dan?

20 A. Okay.

21 Q. Is that your understanding, that they
22 were not produced?

23 A. That, I don't know. I didn't realize
24 that that was an issue.

1 Q. Okay. And at the second inspection,
2 where you were present or not, were records produced
3 at that inspection?

4 A. I apologize. I didn't -- I don't
5 recall directly. I do remember that Rich provided a
6 great deal of support on making us understand or
7 helping us understand what was needed and I do
8 remember sitting at length at points in time having
9 to gather information for Rich, provide information
10 to Rich. I don't recall directly providing that.

11 Q. And the MSDSs are records that you
12 were keeping at that time; is that right?

13 A. Yes.

14 Q. And you were keeping them for presses
15 four and five at that time --

16 A. Yes.

17 Q. -- 2001?

18 A. I apologize. We have to keep MSDS
19 sheets for a lot of different products that come
20 into the building. So they would have been included
21 in a larger binder, not just exclusive to those
22 pieces of equipment.

23 Q. They're required by OSHA regulations
24 also, right?

1 A. Correct.

2 Q. The inks that -- the records you kept
3 on the inks for presses four and five, those were
4 all non-compliant solvent inks, weren't they?

5 A. Correct. When you say records, you
6 mean MSDS sheets?

7 Q. Yes.

8 A. Yes.

9 Q. That's actually exactly what I meant.
10 Thank you.

11 And, again, the first inspection
12 by the Illinois EPA was in October of 2001 and in
13 December of 2002 you shut down press four, is that
14 right, and started using it as a winder instead of
15 having something that would emit VOM?

16 A. I'm not positive on the dates. Those
17 dates do sound correct. And, yes, we did take press
18 four, which is a smaller piece of equipment, and
19 utilize it to rewind products.

20 Q. And also around that time at the end
21 of 2002 was when you bought the plant in Sparta,
22 right?

23 A. Yes.

24 Q. The recirculating oven that was on

1 press five, that came with it when you purchased
2 press five; is that correct?

3 A. Correct.

4 Q. And, again, that was to increase the
5 gas efficiency and not specifically to burn VOM, was
6 it?

7 A. Correct. It was strictly to -- my
8 understanding at that point in time was we were
9 looking for -- I was interested in what is the, you
10 know, most effective operating cost when we were
11 buying a piece of equipment. So you look at, you
12 know, a lot of things, energy usage, speed, set up
13 time and so on. But the focus there was energy
14 usage.

15 Q. And you were involved I take it --

16 A. Yes.

17 Q. -- with the purchase of press five?

18 A. Yes. That was my responsibility.

19 Q. Okay. Let's talk about that a little
20 bit more. When press four was shut down you said
21 that you transferred all of the jobs over to press
22 five?

23 A. Correct.

24 Q. And you changed the time frame of --

1 or the schedule for how long press five would be
2 running then, right?

3 A. Correct.

4 Q. And it went from five days a week to
5 seven days a week, 24 hours a day?

6 A. Correct.

7 Q. And I think that Mr. Harsch said that
8 that produced some type of savings for you because
9 press four was no longer in operation?

10 A. Correct.

11 Q. But it also increased the costs for
12 running press five because now it's got longer
13 running times, right?

14 A. Right. I believe what I was answering
15 was the overall operating cost to produce the same
16 amount of footage, which was the fact that we went
17 from needing six shifts of personnel to four shifts
18 of personnel and were able to get that work done on
19 the one piece of equipment.

20 Q. And before you transferred the work
21 from press four, you had press four and press five
22 operating five days a week, 24 hours a day?

23 A. Correct.

24 Q. So just by increasing two more days,

1 press five was able to handle all the work from
2 press four?

3 A. We eliminated the -- answer to the
4 question is yes.

5 Q. Okay. What did you eliminate?

6 A. We eliminated the start-up, shutdown
7 times. Press five was a newer piece of equipment
8 and had a much higher speed rating. Press four was
9 rated at 600 feet per minute and press five was
10 rated at 1,000 feet per minute, 1,080 feet.

11 Q. So it was a more -- you said it was
12 more efficient press?

13 A. More efficient, faster piece of
14 equipment.

15 Q. Again, talking about -- well, strike
16 that.

17 Was today the first time that you
18 learned that press five wasn't compliant?

19 A. I believe that was discussed in our --

20 Q. Deposition?

21 A. Deposition, yes.

22 Q. You said that you had some kind of
23 conversation with Mr. Trzupek and possibly the
24 Illinois EPA regarding an adjusted standard?

1 A. Yes.

2 Q. Okay. You also told -- or Mr. Harsch
3 asked you about whether or not you understood that
4 you would not be considered for an adjusted standard
5 by Illinois EPA; is that right?

6 A. Yes.

7 Q. Who told you that, Mr. Trzupsek or the
8 Illinois EPA?

9 A. Mr. Trzupsek. A lot of the
10 conversations back then were fairly well over my
11 understanding of the regulations and so on.

12 Q. You were plant manager at that point?

13 A. Yes.

14 Q. Not the general manager that you are
15 now?

16 A. Correct.

17 Q. Now press five you said used a
18 recirculating oven, right?

19 A. Yes.

20 Q. In considering buying and using press
21 six -- that's your last press that you bought; is
22 that correct?

23 A. Correct.

24 Q. And that's called a Comexi press?

1 A. Yes, it is.

2 Q. And you applied for a permit from the
3 Illinois EPA to construct that press in 2003; is
4 that right?

5 A. I don't know the dates for that. I
6 apologize.

7 Q. Actually, let me rephrase that. You
8 applied for the press six construction permit and
9 the RTO at the same time in 2003?

10 A. I believe that's correct. Again, not
11 on the date in particular.

12 Q. Okay. And you constructed the RTO and
13 connected it to press five before you connected it
14 to press six; is that right?

15 A. Boy, that, I don't recall.

16 Q. Okay. I just thought that it started
17 in time first and then you connected it to six after
18 that, at some point after that?

19 A. Boy, you know, I apologize. It has
20 been a long time. I mean, to me, that would be a
21 detail, you know, I mean, but I don't recall exactly
22 which steps we went through.

23 Q. So I don't know if we clarified this,
24 Mr. Imburgia, but when you transferred all of your

1 operations to press five from press four, your VOM
2 emissions went up on press five, is that right,
3 because you had more business on it, more jobs?

4 A. I don't know what the destruction
5 efficiency for the piece of equipment was. But, you
6 know, I would imagine the efficiency would stay the
7 same and there would be more produced off of that so
8 that whatever that difference would be, would be
9 higher, yes.

10 Q. Okay. You talked about checking the
11 gas usage in 2003 and 2004; is that right?

12 A. Yes.

13 Q. You said there was no change in the
14 cost?

15 A. I didn't see a change in the usage in
16 therms.

17 Q. Usage in therms. In 2003, though, you
18 weren't running press four; is that right?

19 A. That's probably correct timing, yes.

20 Q. And sometime in 2004 you started using
21 press six?

22 A. Yes.

23 Q. You said the RTO was self-sustaining,
24 is that what you said?

1 A. Yes.

2 Q. Does that mean that if you connected a
3 third press to it, it wouldn't have a different cost
4 of usage?

5 A. From my understanding about operating
6 that piece of equipment, absolutely not.

7 Q. You also talked a little bit about
8 your experience with an RTO at another facility.
9 What facility is that?

10 A. It's a facility in Sparta, Michigan
11 and that is the facility that we bought up there and
12 I believe that was, again, end of 2002.

13 Q. So the RTO you were referencing in
14 that answer was the one that was connected to press
15 four, which was eventually moved there?

16 A. No. That's currently connected to a
17 press called a Flexotec.

18 Q. So that's a newer type press there?

19 A. It's a newer type press.

20 Q. Does it do eight colors or more?

21 A. Eight.

22 Q. So is that a new RTO that was
23 attached?

24 A. Yes.

1 Q. And you said there was a problem with
2 that because it used too much natural gas too much
3 came into it?

4 A. Yes. What happened is as the air goes
5 in, you try and get as rich a solvent load as
6 possible so that can become a fuel source and the
7 RTO should go down to its pilot gas usage or its
8 pilot light, like you would on a water heater or
9 whatever. And what happened is is that pilot was
10 actually too much gas so they had to reduce the
11 amount of pilot gas that was used.

12 Q. So that was a cost savings, hopefully?

13 A. Yeah. Well, we shut off the catalytic
14 oxidizer that had been in place with the prior
15 ownership, and those are horribly inefficient.

16 Q. We'd never buy a catalytic oxidizer
17 then?

18 A. Perfect.

19 Q. Also, Mr. Harsch was asking you about
20 and you responded about the cost of the therms of
21 natural gas and you said it raised from 2.5 cents a
22 therm to seven cents a therm at different points in
23 time?

24 A. Yes.

1 Q. I don't think Mr. Harsch asked you
2 this. How many therms do you use a year or a month?

3 A. Boy, our highest usages in the winter
4 would be around 15,000 therms. That's some of our
5 highest usages. It probably averages closer to 14,
6 13,5.

7 Q. And is that in 2009 or 2008?

8 A. That is 2008, 2009.

9 Q. Do you know if it was more or less
10 back in 2001 or '2?

11 A. I believe it was less, although, I
12 didn't compare the winter months. Our summer month
13 usage, it varies, but it's about 5,000 therms.
14 Actually, as low as 2,000.

15 Q. Okay. I'm sorry, did you say that
16 15,000 was yearly or monthly?

17 A. That's a month. And that would be in
18 the winter. And that's mostly heating load.

19 Q. Heating for the whole factory --

20 A. Yeah, heating --

21 Q. -- because there's only one point to
22 measure? --

23 A. Yeah, right.

24 Q. So do you have an estimate of what

1 your yearly usage of therms is?

2 A. Boy, I didn't add it up recently, so
3 I'd hate to just guess at the number. I believe
4 that our total gas usage as an organization has been
5 under \$100,000 annually.

6 And, again, a great deal of that
7 is heating load. I would guess a majority of it's
8 heating load in the winter months.

9 Q. You were also asked by Mr. Harsch
10 about the cost estimate to move press four to
11 Sparta?

12 A. Uh-huh.

13 Q. You said that some of your own company
14 personnel moved it?

15 A. Yes.

16 Q. Okay. I believe the cost was
17 estimated somewhere around \$15,000?

18 A. I believe that was the number,
19 correct.

20 Q. Okay. And was that -- what did that
21 number represent, if you know?

22 A. That represented a certain level of
23 disconnection at the facility in Carol Stream and
24 rigging or freight, well, rigging basically, a minor

1 amount of disassembling.

2 It had an unwinder and a rewinder.
3 Both of them are similar to the size of the table
4 that you're sitting at. Those were the only
5 free-standing pieces of equipment that were
6 separated off of the main piece of equipment which
7 was, you know, shorter than an ice cream truck but
8 kind of length of maybe a Good Humor truck. That
9 was taken as one assembly and put onto another truck
10 to Michigan.

11 Q. So it did include your internal labor
12 cost?

13 A. Yes, it did include. There was very
14 limited internal labor costs because it's not like
15 we did a full rigging on it. On larger pieces of
16 equipment, you would disassemble it. You'd take
17 what's called the bridge or the main oven section
18 off, you'd take the winding sections off. You'd
19 separate it into all of its pieces. This a small
20 enough piece of equipment where we did not do that
21 type of disassembly.

22 Q. Was it moved by train or truck?

23 A. Truck.

24 Q. Did you guys own that truck?

1 A. No, I don't believe so.

2 Q. So that had to be rented or --

3 A. Yeah.

4 Q. -- or paid for?

5 Just to go through a few things.

6 The recirculating oven, when you bought that, do you
7 remember, with press five, what year that was that
8 you bought the press? Was it 1995, if you remember?

9 A. I think it's '95, but I don't know for
10 sure.

11 Q. That press didn't have a monitoring
12 device on it when you bought it, did it?

13 A. No. The monitoring as far as what,
14 VOC output?

15 Q. Yes.

16 A. No.

17 Q. Did you provide any cost estimates for
18 the maintenance or operations to Mr. Trzuppek?

19 A. Of what?

20 Q. Of the cost and operation of the RTO.

21 A. Provided a little bit of data. I know
22 Tim Piper helped me assemble that data, as well, but
23 some past maintenance records.

24 Q. And when did you provide that?

1 A. As far as the maintenance records?

2 Q. Any information to Mr. Trzupsek.

3 A. I don't know. Maybe it was -- I don't
4 know who it was provided to, but we had some
5 maintenance records where the incident I referred to
6 the air line freezing was one of the maintenance
7 events that information had been gathered on.

8 Q. Do you remember what year that was?

9 A. I don't know. I apologize. I don't
10 know that right off the top of my head.

11 Q. Do you remember how much it cost to
12 repair that?

13 A. I don't recall that off the top of my
14 head either.

15 Q. Now the cost of the RTO, the 250,000,
16 do you know if that covered the engineering,
17 delivery, installment and training?

18 A. Yeah. That was -- to the best of my
19 knowledge, it was a one -- an in-total price.

20 Q. Okay. Did the 250,000 include any
21 future maintenance, repairs or extended warranties?

22 A. I don't know about future maintenance.
23 A warranty. Any warranties that came with it would
24 have been part of that price.

1 Q. What was the warranty that came with
2 it?

3 A. I don't know off the top of my head.

4 Q. Was it more than a year?

5 A. I don't know off the top of my head.
6 I don't think so, but I don't know that for sure.

7 Q. Is that what the usual amount of time
8 is on a warranty for equipment?

9 A. Yes. It would not be an uncommon
10 warranty, one year. Sometimes if there's highly
11 specialized equipment there might be, you know, a
12 longer warranty for some of the specialized stuff.

13 Q. You made the purchase of press six and
14 the RTO to help your organization grow and stay
15 viable to meet your customers's future needs; is
16 that an accurate statement?

17 A. Yes, it is.

18 Q. And when you made the decision to buy
19 the RTO, you and your family or your father, who did
20 you talk to to assess if that would be the best
21 solution for you?

22 A. I know we would have consulted with
23 Rich Trzupsek as one of those probably key sources.

24 Q. Did you talk to anyone else such as

1 press manufacturers or ink companies?

2 A. Yeah. I believe that I did some
3 research on my own. In fact, I know I did some
4 research on my own. And during that research I
5 stumbled upon some information regarding a bacteria.
6 I believe it's called a bacteria bed or whatever,
7 it's one option. A catalytic oxidizer is another
8 option.

9 I see my role in doing that type
10 of research is to be the person who's thinking
11 outside of the box.

12 Q. That was the biomass --

13 A. The biomass.

14 Q. -- alternative?

15 A. I think that's what it's called.

16 Q. Okay. I hadn't heard of that before,
17 I don't think.

18 And, Joe, the purchase of this RTO
19 and connecting the press, that was what you wanted
20 to get done, too, right?

21 A. As far as the RTO and the -- I mean,
22 at one point in time it was floated that we would
23 continue to operate press four and buy a used small
24 oxidizer and I generally had no interest in that.

1 Q. You made that known, I presume?

2 A. Yeah. It's a family business.

3 Q. Okay.

4 A. Can't hide a lot of those opinions.

5 Q. And concerning Mr. McClure, have you
6 ever met him before the last few weeks?

7 A. No, I haven't.

8 Q. You did not provide him any numbers
9 concerning costs of the RTO or the operation or
10 maintenance or any other costs?

11 A. I don't believe I provided him any
12 information directly and wasn't really involved
13 because Tim Piper's role in what we're doing today,
14 you know, he's been the contact, the point person on
15 most of this stuff recently.

16 MS. WHEELER: I have no further
17 questions at this time.

18 HEARING OFFICER HALLORAN: Thank you,
19 Ms. Wheeler. Mr. Harsch.

20 REDIRECT EXAMINATION

21 BY MR. HARSCH:

22 Q. If it was being used as a rewinder,
23 why did you move press four to Sparta?

24 A. Well, the discussion of needing to

1 increase capacity and bring in eight-color -- I
2 should say not increased capacity as much as --
3 well, increased capacity and broaden our ability to
4 produce with the oxidizer in the press, the concept
5 was, boy, we're going to make everybody happy, be
6 able to settle this and move forward.

7 When we became concerned that our
8 grand plan didn't work and what was suggested, then
9 we said, boy, you know, we need to potentially be
10 able to print products for our customers on our
11 existing business somewhere else.

12 Q. By grand plan, you mean resolve --

13 A. Well.

14 Q. -- the compliance issues with the
15 Illinois EPA?

16 A. I would -- well, the grand plan, I
17 refer to the unfortunate wording in the permit that
18 said, you know, we need to increase our capacity
19 and, you know, we're going to replace this and so on
20 with an oxidizer.

21 MR. HARSCH: I have nothing further.

22 HEARING OFFICER HALLORAN: Thank you,

23 Mr. Harsch. Ms. Wheeler, any recross?

24 MS. WHEELER: No.

1 HEARING OFFICER HALLORAN: Thank you.

2 Thank you, Mr. Imburgia.

3 MR. JOSEPH IMBURGIA: Thank you.

4 MR. HARSCH: Thank you very much.

5 Mr. Piper.

6 (Witness sworn.)

7 WHEREUPON:

8 TIMOTHY PIPER

9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HARSCH:

13 Q. Tim, would you please state your full
14 name for the record?

15 A. Timothy, middle initial J, and last
16 name Piper, P-I-P-E-R.

17 Q. And can you provide a brief recount of
18 your educational background?

19 A. I have a bachelor's degree in chemical
20 engineering and in business management. I have done
21 all of the coursework for an MBA, just haven't done
22 the thesis because in the industry I'm in it really
23 didn't serve a purpose.

24 Q. When were you first hired at Packaging

1 Personified?

2 A. I was hired on September -- I was
3 hired in September of 2005.

4 Q. And can you briefly describe your work
5 experience prior to joining Packaging Personified?

6 A. I've been in the industry for
7 28 years. I've always worked for smaller,
8 family-owned type companies all in the Chicago area.

9 HEARING OFFICER HALLORAN: Mr. Piper,
10 before you proceed, you have a piece of paper
11 you're reading off of?

12 THE WITNESS: When I gave a deposition
13 I bounced around in dates and it was caught,
14 hey, wait a second, you have a gap here and a
15 gap there.

16 HEARING OFFICER HALLORAN: You can put
17 that away.

18 THE WITNESS: Okay. Sorry. I didn't
19 want to get into the same thing like we did
20 before. Sorry about that.

21 BY THE WITNESS:

22 A. But I've been in the industry. I've
23 been involved in quality. I've been involved in
24 manufacturing. I've done some safety and regulatory

1 compliance with printers in the industry.

2 BY MR. HARSCH:

3 Q. Have you also served as manager of
4 printing operations?

5 A. Yes, I have.

6 Q. Would you say you have considerable
7 experience in the running of printing operations?

8 A. Yes, sir.

9 Q. Do you know the difference between a
10 flexographic printer and an --

11 A. And an offset press and a rotogravure
12 press, yes, I do.

13 Q. What is your present job title at
14 Packaging and explain your duties, if you would?

15 A. Manager, quality compliance. I have
16 responsibility, when time allows, for production
17 quality in the Carol Stream facility. I'm
18 responsible for product safety for both of the
19 facilities, the one in Carol Stream and the one in
20 Sparta, Michigan.

21 I'm responsible for the record
22 keeping for any environmental issues. I'm also,
23 from an OSHA standpoint, there to be used as a --
24 someone who understands regulations to make sure

1 that we're in compliance, also.

2 Q. Does that include environmental --

3 A. Yes, it does.

4 Q. -- regulations?

5 A. Regulations, in that I work closely
6 with Rich Trzupsek as him being the advisor to make
7 sure that we are compliant.

8 Q. When you first started at Packaging
9 Personified, did you sit down with Rich Trzupsek and
10 go over what the record keeping requirements were?

11 A. In actuality, it was three or
12 four months after I had started because Alex Wilson
13 was still there.

14 But once Alex left, that
15 responsibility was given to me and I immediately got
16 with Rich and said, okay, where do we need to be,
17 what do we need to do.

18 Q. And you heard Joe testify earlier that
19 in the 2001 time frame Packaging had material safety
20 data sheets, correct?

21 A. Correct.

22 Q. And they had information from ink
23 suppliers?

24 A. Correct.

1 Q. And they had purchase orders?

2 A. That is correct.

3 Q. And they had job tickets that
4 described the production for each job?

5 A. That is correct.

6 Q. Have you physically seen those records
7 from the 2001 time frame?

8 A. I did see the information that Rich
9 Trzupek did use when he did come on board. And,
10 yes, I did see the MSDSs, I did see purchasing
11 records.

12 Q. And have you worked with Rich Trzupek
13 in certain spreadsheets that he's developed and
14 maintained the records in a manner that would
15 satisfy the environmental requirements?

16 A. Yeah. The annual emissions report
17 actually is an Excel spreadsheet that Rich developed
18 and we've tweaked it a little bit to make it simple
19 with the rest of the system and the Access database
20 that Joe had mentioned.

21 Q. And you maintain -- explain how you
22 maintain your records.

23 A. Well, we're in the manufacturing
24 business so everything starts with a job order from

1 a customer. And that order actually encompasses the
2 footage, the amount of ink that's being used or the
3 colors of the ink that are being used.

4 And, in turn, that information is
5 put into an Access database and then that
6 information is summarized, et cetera, and along with
7 the purchasing records is actually used to generate
8 the information needed for the annual, semiannual,
9 monthly, et cetera reports.

10 Q. And do you maintain all of your
11 information in a single record book --

12 A. What --

13 Q. -- per year?

14 A. When I first started doing it, there
15 was one book with all the information in there. But
16 since then, we've broken it down to where each year
17 since 2000 there's an individual book that includes
18 the RTO temperature charts, includes hazardous waste
19 information, includes all the information that's
20 required to meet the permits that we have.

21 Q. That would have been the RTO thermal
22 chart since its installation?

23 A. That's correct.

24 Q. And that was, as you understand, based

1 on records in late 2003?

2 A. 2003. I believe there's a half a
3 month of November, December and after that.

4 Q. In response to a request from the
5 Attorney General's Office, did you prepare a CD-ROM,
6 an example of your record keeping for one of the
7 years?

8 A. What we actually did is when the
9 Attorney General was in to do the inspection -- I'm
10 not sure what you called it -- of the books that we
11 had, we went through and everything that we had
12 electronically we put on a CD-ROM, so it was more
13 than just year year.

14 The only thing that we could not
15 do was the RTO charts because they are of that
16 thermal paper. They don't copy well. They -- that
17 was not on the CD-ROM.

18 Q. And if you printed out the CD-ROM and
19 looked at it, that would be comparable to the actual
20 records that you're currently maintaining?

21 A. That is correct.

22 Q. And that would be comparable -- you've
23 gone back and reworked the historical record keeping
24 into the same format; is that correct?

1 A. That's exactly right.

2 Q. And a copy of that CD-ROM is our
3 Exhibit 51.

4 MR. HARSCH: Right?

5 MS. VILLASENOR-RODRIGUEZ: Correct.

6 BY MR. HARSCH:

7 Q. And that's the same CD-ROM that we
8 provided to the Attorney General's Office in the
9 document discovery, right?

10 A. (Witness nodding.)

11 MR. HARSCH: I would move for the
12 admission of that document.

13 MR. GRANT: We object on the basis of
14 relevance. The record was created in the
15 2008 period of non-compliance, I believe, so
16 it goes through maybe 2005 at the latest.

17 MR. HARSCH: It clearly shows the
18 current record keeping, goes to the fact that
19 what the level of effort is that the company
20 is having at maintaining records.

21 And I think the witness has just
22 testified that it's in the same format of the
23 time period that we're talking about. It was
24 an example --

1 THE WITNESS: And it went to --

2 HEARING OFFICER HALLORAN: Excuse me,
3 sir. I'm not sure on how relevant it is. I
4 think the Board will weigh it accordingly.
5 But it does support his direct testimony for
6 the last five to ten minutes. Thank you.
7 Objection overruled.

8 Respondent's Exhibit 51 is
9 admitted over objection.

10 BY MR. HARSCH:

11 Q. Can you describe the frequency of
12 operation of presses one and two?

13 A. Presently?

14 Q. Going back to when you started.

15 A. Press number two has not functioned
16 since 2003. Since I have been there, press number
17 one, three to four days a month.

18 Q. That's just based on customer demand?

19 A. That's exactly it, for that product
20 line.

21 Q. You were aware that Rich Trzupke had
22 submitted the seasonal emissions reports for up
23 through 2002?

24 A. Correct.

1 Q. What was your understanding when you
2 were hired at Packaging after you had been there a
3 while with respect to seasonal emission reports for
4 2003 and 2004?

5 A. My understanding was that, through the
6 one book that was there at the time, that the annual
7 emissions and the ERMS reports were all up-to-date
8 and submitted.

9 Q. And beginning with 2005, which would
10 have been after you started, you actually worked in
11 the submittal of those documents?

12 A. Right. I knew they were done.

13 Q. When it became apparent that 2003 and
14 2004, the Agency didn't have copies, what did you
15 do?

16 A. Actually, I became aware of that on
17 April 9th during the deposition. So that weekend I
18 went through all the records we had and created or
19 recreated the ERMS reports for those two years plus
20 went back and looked at what we had submitted just
21 to make sure it was all done on the same basis.

22 Q. And you heard Mr. Imburgia say that he
23 had directed Mostardi Platt to submit the paperwork
24 to get into the ERMS program. Did you assist in

1 doing that?

2 A. Yes, I did.

3 Q. And can you explain what you did?

4 A. What I did is exactly what I had said.
5 I went through the years that we would have had to
6 submit ERMS reports, just verify the data, verified
7 how everything was calculated, went over with Rich
8 on that and then just made sure that from the
9 beginning date to 2008 that the ERMS reports were
10 done, all five, six pages.

11 Q. And what was your results of your
12 analysis in terms of seasonal emissions for 2003 --
13 beginning in 2003?

14 (Whereupon, a discussion
15 was had off the record.)

16 BY MR. HARSCH:

17 Q. What did you find when you looked at
18 2003?

19 A. What I did is I looked through in
20 2003, we were over (inaudible).

21 THE COURT REPORTER: Pardon me?

22 BY THE WITNESS:

23 A. Over the ten-ton requirement for ERMS.
24

1 BY MR. HARSCH:

2 Q. But did you calculate then for 2004?

3 A. 2004 was the first year of the RTO in
4 use. And I believe -- now you're trying to -- I
5 believe that was below the ten tons.

6 Q. And was that what you found for 2005,
7 as well?

8 A. Correct. That's going strictly off
9 memory. I don't have the information sitting in
10 front of me.

11 Q. So the two missing years of SERs were
12 below ten tons -- no, 2003 was above, 2004 was
13 below?

14 A. That is correct. My recollection is
15 since the RTO was put in we have been below the
16 ten tons.

17 Q. Okay. Since you have been employed at
18 Packaging Personified are you aware of any statement
19 or request by the Agency for Packaging Personified
20 to actually purchase ATUs?

21 A. No.

22 Q. If you look at the book behind you,
23 Exhibit 50. It's been admitted. Is that the
24 submittal that Mostardi Platt submitted to the

1 Agency with respect to correcting the -- your
2 corrections in seasonal emission reports and has
3 testified to?

4 A. That is correct.

5 Q. And also requesting that the Agency
6 tell us how many ATUs we owe them?

7 A. That is correct.

8 Q. And is it your understanding that
9 management made the decision that once we know that,
10 we'll buy the ATUs?

11 A. That is correct.

12 Q. Based on your experience in the years
13 working in the printing industry, is it physically
14 possible to operate a recirculating press in other
15 than a recirculating mode without making physical
16 changes to the press?

17 A. No.

18 Q. You've overseen the operation --
19 maintained the maintenance logs for the RTO,
20 correct?

21 A. Correct.

22 Q. Can you describe the actual amount of
23 maintenance that that unit requires?

24 A. All production pieces of equipment --

1 we say the RTO itself actually is a production piece
2 of equipment. We will allot up to eight hours a
3 month. The RTO, if it's an hour a month just to
4 make sure everything looks okay, that's about what
5 we'd spend.

6 For a significant maintenance,
7 four hours. So estimate, 12 to maximum 20 hours a
8 year. But the maintenance department is not broken
9 down into specific equipment time. So that's just
10 part of a normal maintenance budget.

11 Q. It was basically operating
12 maintenance-free, problem-free?

13 A. Well, maintenance costs money, so it's
14 part of normal business. It's -- that's if the RTO
15 did not exist, we'd still have that maintenance
16 cost, it would be spread across the facility. So
17 there is not unique maintenance costs for that unit.

18 MR. HARSCH: Thank you.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Harsch. Mr. Grant or Ms. Wheeler.

21 CROSS EXAMINATION

22 BY MR. GRANT:

23 Q. Just to follow-up on what we talked
24 about with those new seasonal emission calculations,

1 you testified as to 2004 and 2005, those numbers
2 that you've submitted have not been accepted by the
3 Agency yet, correct?

4 A. (Witness shaking head.)

5 THE COURT REPORTER: I didn't hear the
6 answer.

7 BY THE WITNESS:

8 A. Actually, 2000 --

9 MR. HARSCH: As part of the
10 stipulation, I think we did talk that we're
11 in no way submitting this in any way to
12 buying the Agency for their determination.
13 We have yet to receive a response from the
14 Agency.

15 MR. GRANT: Yeah.

16 MR. HARSCH: And accept or reject, I
17 couldn't tell you.

18 MR. GRANT: Yeah. That's fine. In
19 other words, it could potentially affect what
20 they're doing now.

21 HEARING OFFICER HALLORAN: Okay.

22 Thank you for clarifying that for the record.

23 BY THE WITNESS:

24 A. And those were done as 2003 and '4.

1 2005 was submitted at the end of 2005 because that's
2 the first one that I was involved in.

3 BY MR. GRANT:

4 Q. But as far as the recalculation that
5 you recently performed --

6 A. 2003 and '4.

7 Q. Right. So it would be since the RTO
8 was installed, I think. In fact, those have been --
9 that would be 2004 and 2005 calculations for
10 seasonal emissions. That's what we were talking
11 about.

12 A. Okay.

13 MR. GRANT: I think our stipulation
14 takes care of it.

15 MR. HARSCH: We're fine.

16 BY MR. GRANT:

17 Q. I didn't hear when you started.

18 A. When I started?

19 Q. You dropped the tone of your voice,
20 just like I do.

21 A. I'm sorry. It was September 2004.

22 Q. Okay, 2004. And you mentioned
23 experience in the printing industry?

24 MR. HARSCH: Wait a minute.

1 THE WITNESS: That's not right.

2 HEARING OFFICER HALLORAN: Witness is
3 consulting the --

4 BY THE WITNESS:

5 A. 2005. I am sorry.

6 BY MR. GRANT:

7 Q. Okay. That's what I thought.

8 A. I'm probably on my fourth -- four-year
9 anniversary. I am sorry.

10 Q. That's fine. And you said before that
11 you worked in the printing industry?

12 A. Correct.

13 Q. Was it as a consultant or were you
14 working for a specific printer?

15 A. I actually worked -- there was a year
16 that I worked with my wife in a non-related area.
17 But prior to that, I worked for printers 23 years.

18 Q. We mentioned three printers that got
19 adjusted standards; Vonco, Formel and Bema. Did you
20 work for any of those three companies?

21 A. No, I did not.

22 Q. Did you work in the flexographic
23 printing industry?

24 A. Yes, I did.

1 Q. When did you first learn of the
2 control regulations under Part 218? And what I'm
3 talking about is 218.401, what this case is all
4 about. When did you first learn about those?

5 A. When I personally learned about them?

6 Q. Yes.

7 A. Probably around 2000.

8 Q. Who were you working for between --
9 were you working for a flexographic -- or working in
10 the flexographic printing industry between 1993 and
11 2000?

12 A. Yes.

13 Q. Okay. But you were unaware -- is it
14 your testimony that you were unaware of the control
15 requirements?

16 A. I did not have that -- those
17 responsibilities.

18 Q. Were you working in the Chicago
19 metropolitan area?

20 A. Yes, I was.

21 Q. What sorts of responsibilities did you
22 have during that period? I understand you didn't
23 have to always do regulatory stuff, but --

24 A. And you're saying from '93?

1 Q. 1993 to 2000.

2 MR. HARSCH: Can he look at the sheet?

3 MR. GRANT: Yes.

4 THE WITNESS: I just need to look at
5 my sheet real quick.

6 HEARING OFFICER HALLORAN: The witness
7 is consulting his notes.

8 BY THE WITNESS:

9 A. In the beginning of that time I worked
10 for a company where I was actually outside the
11 flexographic area and I was working for a high
12 performance plastic company that did highway
13 sheeting and reflectors.

14 And after that time I worked for a
15 company starting in '96 that did have a number of
16 flexographic and offset presses, but it was all
17 water-based because it was the forms industry.

18 And then in -- I'm sorry, my mind
19 is losing it. Then in July of 1998 I worked for a
20 company in Marengo, Illinois that was specific to
21 flexographic printing and the plastics industry.

22 BY MR. GRANT: =

23 Q. Marengo would be outside of the
24 Chicago metropolitan area?

1 A. That's correct.

2 Q. So not affected by the 218
3 regulations?

4 A. Right on the edge of it.

5 Q. I wanted to -- you testified to a
6 certain extent about the records that -- and I'm
7 thinking of the records of ink usage -- or VOM
8 content of inks and daily ink usage that are now
9 kept at the facility. Do you know when that current
10 record keeping system was instituted, what you have
11 now?

12 A. Actually, the basic record keeping
13 system we have now was instituted shortly after Rich
14 Trzupek was brought onboard at the end of 2001,
15 2002, because he brought it in for us to use.

16 Q. As far as the MSDS records, which for
17 the record are material safety data sheets, MSDSS
18 have been required of manufactures for a long time,
19 haven't they?

20 A. Correct.

21 Q. Well before 1993?

22 A. Oh, well before then.

23 Q. And there's nothing in the record
24 keeping requirements in Section 218, specifically

1 flexographic printers -- I don't remember. I've got
2 the regulation here if you need it. There's no
3 mention of MSDS or material safety data sheets in
4 those regulations, is there?

5 A. I can't say.

6 Q. Okay. But it does say it does require
7 records?

8 A. Correct.

9 Q. You mentioned hazardous waste, you
10 know, how hazardous waste is managed at the
11 facility. How big of a generator of hazardous waste
12 is Packaging Personified?

13 A. Packaging Personified has been
14 designated as a large generator. Currently, that's
15 two to four 55-gallon drums in a month.

16 Q. And as a large quantity generator,
17 they have to submit an annual hazardous waste
18 report, right?

19 A. That is correct.

20 Q. Do you know if they submitted those
21 reports during the 1990s?

22 A. The records I have says yes.

23 Q. Okay. And did they have a hazardous
24 waste management system through the 1990s?

1 A. Yes.

2 Q. So to the best of your knowledge they
3 were fully aware of the hazardous waste
4 requirements?

5 A. Based on manifests that they have on
6 file, correct.

7 Q. Were you working for Packaging
8 Personified when they installed press six?

9 A. That was before my time, no.

10 Q. Do you know if it was installed with a
11 recirculating oven?

12 A. I cannot say.

13 Q. I guess what I want to ask is does the
14 RTO require annual cleaning or cleaning on a
15 periodic basis?

16 A. Just the simple maintaining when you
17 look at it and you look inside the chambers, and
18 that's not that significant of an operation. It's
19 minimum.

20 You know, you're burning gases so
21 there really isn't any potential -- unless it
22 overheats, there's really no charring, et cetera.

23 Q. Does the RTO run on a continuous
24 basis? And I'm thinking 24/7 when I say that.

1 A. When the presses are running, it runs
2 24. When the presses are not running, we do shut it
3 off because it becomes 100 percent gas usage.

4 Q. And how many hours per week -- could
5 you estimate how many hours per week Packaging
6 Personified is operating the presses right now?

7 A. Typical week, 120 hours, 5/24.

8 Q. And is there a way to tell who or do
9 you have any knowledge of operations -- how many
10 hours of operation there was say in 2000 to 2004?

11 A. You're talking about that whole
12 period?

13 Q. Yeah, before you were with the
14 company.

15 A. Based on just going back on the
16 records it was, for the most part, the same thing,
17 120 a week with the two presses. But when it was
18 just press five, it was 24/7. And there are
19 weekends of come and go with that.

20 Q. I understand that it depends on the
21 business.

22 MR. GRANT: That's all I've got.

23 HEARING OFFICER HALLORAN: Thank you.

24 Mr. Harsch.

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REDIRECT EXAMINATION

BY MR. HARSCH:

Q. The material safety data sheets provide whether there's solvent in the inks?

A. That is correct.

Q. That's why they're important?

A. That's why you have that. They tell you what the VOM content is.

MR. HARSCH: No further questions.

MR. GRANT: Nothing.

HEARING OFFICER HALLORAN: Thank you. Mr. Piper, you may step down. Let's go off the record for a second.

(Whereupon, a discussion was had off the record.)

HEARING OFFICER HALLORAN: Back on the record. We're going to conclude the hearing for today until tomorrow, June 30th. That's it. Have a safe trip home and behave yourselves. Thank you.

(Which were all the proceedings had in the above-entitled cause on this date.)

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF WILL)

3

4 I, Tamara Manganiello, CSR, RPR, do hereby
5 certify that I reported in shorthand the proceedings
6 held in the foregoing cause, and that the foregoing
7 is a true, complete and correct transcript of the
8 proceedings as appears from my stenographic notes so
9 taken and transcribed under my personal direction.

10

11

Tamara Manganiello
TAMARA MANGANIELLO, CSR, RPR
License No. 084-004560

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20 SUBSCRIBED AND SWORN TO
before me this 13th day
of July, A.D., 2009.

21

[Signature]
Notary Public

22

23

24



A				
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