

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF	)	<b>RECEIVED</b> CLERK'S OFFICE MAY 31 2013 STATE OF ILLINOIS Pollution Control Board
ILLINOIS,	)	
Complainant,	)	
vs.	) No. PCB 04-16	
PACKAGING PERSONIFIED,	) (Enforcement-Air)	
INC., an Illinois	)	
Corporation,	)	
Respondent.	)	

TRANSCRIPT FROM THE PROCEEDINGS

taken before HEARING OFFICER BRADLEY P. HALLORAN by KARI WIEDENHAUPT, CSR, at the City of Elmhurst, 209 North York Street, Council Room, 2nd Floor, Elmhurst, Illinois, on the 21st day of May 2013, A.D., at 9:00 o'clock a.m.

ILLINOIS POLLUTION CONTROL BOARD,  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
MR. BRADLEY P. HALLORAN, HEARING OFFICER

A P P E A R A N C E S

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OFFICE OF THE ATTORNEY  
STATE OF ILLINOIS  
69 West Washington Street  
Suite 2800  
Chicago, Illinois 60602  
(312) 814-3000  
BY: MR. CHRISTOPHER GRANT  
MS. NICHOLE SANGHA

Appeared on behalf of the Complainant;

DRINKER, BIDDLE & REATH, L.L.P.  
9 191 North Wacker Drive  
Suite 3700  
Chicago, Illinois 60606  
(312) 569-1000  
BY: MR. ROY M. HARSCH

Appeared on behalf of the Respondent.

1

## I N D E X

2

WITNESSES:	Direct	Cross	Re Direct	Re Cross	By Examiner
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3

JOSEPH IMBURGIA

15	50	102	133
	89	136	141

5

6

RICHARD TRZUPEK

143	176	232	249
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7

CHRISTOPHER McCLURE

8

252	264	280	284
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9

KEVIN MATTISON

287	307	317	
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RICHARD TRZUPEK

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319	330	333	334
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## E X H I B I T S

13

NUMBER

MARKED FOR ID

ADMITTED

14

HEARING OFFICER Exhibit

No. 2

12

12

15

COMPLAINANT Exhibit

16

No. 15

316

No. 16

88

17

No. 18

230

No. 19

146

18

No. 21

62

No. 22

287

19

RESPONDENT Exhibit

20

No. 59

22

No. 60

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21

No. 61

286

No. 62

146

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No. 63 (offer of proof)

132

Nos. 64-65

257

23

No. 66

286

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HEARING OFFICER HALLORAN: Good

3

morning, everyone. My name is Bradley Halloran.

4

I am a hearing officer with the Illinois Pollution

5

Control Board. I am also assigned to this matter

6

entitled, People of the State of Illinois, the

7

Complainant, versus Packaging Personified, Inc.,

8

PCB 2004-16. Today is May 21st, 2013. It's

9

approximately 9:25 a.m.

10

This supplemental hearing was

11

scheduled in accordance with the Illinois

12

Environmental Protection Act and the Pollution

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Control Board rules and procedures. It will be

14

conducted according to the procedural rules found

15

in Sections 101 and 103 of the Board's procedural

16

rules. This is an air enforcement case, and as

17

most of you know, I do not make the ultimate

18

decision. I am here to rule on any evidentiary

19

matters and make the record hopefully clear and

20

concise so that the five members of the Board can

21

peruse and rule.

22

On March 1st, 2012, the Board

23

granted respondent's motion for reconsideration in

24

part. The majority of the Board directed the

1 parties to expeditiously return to hearing solely  
2 to address a discreet economic benefit matter  
3 concerning penalty. The Board requested the  
4 parties to address the following:

5 Did the press 5 tunnel dryer  
6 system constitute a capture system and control  
7 device under 35 Illinois Administrative Code  
8 218.401(c)?

9 Would press 5 and the tunnel  
10 dryer system have accommodated the entire  
11 production of both press 4 and press 5 from March  
12 15th, 1995 to February 26th, 2004? What costs, if  
13 any, did Packaging avoid or delay by not shifting  
14 press 4's production to press 5 until after press  
15 4 ceased operating in December of 2002?

16 Would a formal stack test of the  
17 press 5 tunnel dryer system have demonstrated  
18 compliance with the capture and control  
19 requirements of 35 Illinois Administrative Code  
20 218.401(c)?

21 What costs, if any, did  
22 Packaging avoid or delay by not building a TTE for  
23 press 5 and performing a formal stack test of the  
24 tunnel dryer system?

1                   Before we proceed to opening, if  
2 any, if the parties could introduce themselves and  
3 then we will take care of any preliminary matters  
4 that we have to. State?

5                   MS. SANGHA: Nichole Sangha with the  
6 People.

7                   MR. GRANT: Chris Grant with the  
8 Attorney General's Office.

9                   MR. HARSCH: Roy Harsch with the law  
10 firm of Drinker, Biddle and Reath on behalf of  
11 Packaging.

12                   HEARING OFFICER HALLORAN: Thank  
13 you. Do you want to tackle any preliminary  
14 hearing matters we have now regarding the motions  
15 in limine or the motions for non-disclosable  
16 material now, or do you just want to do that when  
17 they come up?

18                   MR. GRANT: Sure. The State is  
19 ready.

20                   HEARING OFFICER HALLORAN: Opening,  
21 State?

22                   MR. GRANT: We are going to waive  
23 opening statements.

24                   HEARING OFFICER HALLORAN:

1 Mr. Harsch, opening?

2 MR. HARSCH: Very briefly. We are  
3 thankful that the Board did grant our motion for  
4 reconsideration in part, and we believe that we  
5 will be showing today through the testimony of Joe  
6 Imburgia, Richard Trzupsek and Christopher  
7 McClure --

8 THE COURT REPORTER: I'm sorry. I  
9 can't hear you.

10 MR. HARSCH: Through the testimony  
11 of Joe Imburgia, Rich Trzupsek and Christopher  
12 McClure we will be able to successfully respond to  
13 all of the questions the Board directed the  
14 parties to hearing for today, and that will  
15 conclude my opening statement.

16 HEARING OFFICER HALLORAN: Do you  
17 think it might be wiser to move the table closer?  
18 It's going to be a long hearing.

19 THE COURT REPORTER: Yeah. It's  
20 pretty hard for me to hear.

21 HEARING OFFICER HALLORAN: Yeah, so  
22 I think we are going to have to --

23 MR. HARSCH: I can speak up a little  
24 louder.

1 HEARING OFFICER HALLORAN: All  
2 right. I neglected to mention by agreement  
3 because this is a supplemental hearing, and it's  
4 pretty much addressed in the 42(h) factors that  
5 Packaging will proceed first. So if Packaging  
6 wishes to call their first witness.

7 MR. HARSCH: Yes. Mr. Joe Imburgia,  
8 please, take the stand.

9 HEARING OFFICER HALLORAN:  
10 Mr. Harsch, will you be getting into the  
11 non-disclosable stuff?

12 MR. GRANT: Yes. Well, first let me  
13 ask -- excuse me. Is Mr. Dominic Imburgia going  
14 to testify?

15 MR. HARSCH: Not -- I don't intend  
16 to.

17 MR. GRANT: Yeah, we will be getting  
18 into the non-disclosable stuff.

19 HEARING OFFICER HALLORAN: All  
20 right. Should I close the door and post a sign  
21 regarding the hearing is closed until Mr. Imburgia  
22 gets off the stand? Would this be a good time to  
23 do it or how far into direct?

24 MR. HARSCH: I believe it will be



1 very limited, if at all, in my direct.

2 HEARING OFFICER HALLORAN: Okay.

3 All right. Well, proceed, but as soon as you  
4 start touching on it, I will shut the door.

5 (Whereupon, a discussion was had  
6 off the record.)

7 HEARING OFFICER HALLORAN: What I  
8 have suggested to the court reporter is when we  
9 start talking about the non-disclosable  
10 information that she get a different transcript  
11 and do it that way and let me know when it's  
12 finished. Mr. Harsch?

13 MR. HARSCH: Yes. I should have --  
14 you know, I didn't understand basically what you  
15 were asking. We have -- Packaging has filed a --  
16 Packaging has reached a stipulation with  
17 Mr. Grant, with the State, with respect to how to  
18 address and how to handle certain confidential  
19 information that was taken from tax returns that  
20 were provided to the State in response to a  
21 discovery request in the Board order.

22 We agreed to do so in this  
23 manner so that we would not have to produce the  
24 actual tax returns and have them treated as trade

1 secret. I have filed a motion with the hearing --  
2 with the Board and the Hearing Officer to treat  
3 this information as confidential and mark it as  
4 such.

5 Mr. Grant and I have reached --  
6 signed a stipulation to that effect. We have  
7 both -- we marked the documents as  
8 confidential/non-disclosure, and we have redacted  
9 copies available as well that have the numbers  
10 removed from the stipulation.

11 To the extent necessary, if it  
12 comes up, I do have the income tax returns for the  
13 years in question with me, and I have made copies  
14 of the first two pages of the return with the line  
15 items also redacted, if that were to come up.

16 And at the Hearing Officer's  
17 suggestion, we have also presented a motion --  
18 excuse me -- an affidavit from Mr. Dominic  
19 Imburgia regarding the fact that Packaging always  
20 treats their tax information as confidential, and  
21 only discloses it with that understanding, and  
22 that they would suffer harm potentially because of  
23 their competitors or their customers using the  
24 information contained in the returns.

1                   And I believe I provided you  
2 with a copy and will provide a substitute copy  
3 that is actually notarized. I just got the signed  
4 affidavit this morning.

5                   HEARING OFFICER HALLORAN:

6 Mr. Grant, did you drop that stipulation up here?  
7 I can't find it. Did you put it in the book? I  
8 thought it was --

9                   MR. GRANT: Oh, yes. It's Exhibit  
10 No. 17. That's a version that's signed.

11                  MR. HARSCH: Is that -- does that  
12 include the redacted version as well with a --

13                  MR. GRANT: No. It's not. It's  
14 just the stipulated with -- from the 1994 to 2004  
15 income tax information. We stipulated gross  
16 profit. We've stipulated total income and sales.

17                  MR. HARSCH: We will need then to  
18 provide, and we will do so, the redacted version  
19 that just has those numbers removed from it as  
20 well. So that would be a non --

21                  MR. GRANT: Oh, so that we have an  
22 exhibit with the material redacted? Yeah. I have  
23 not -- I didn't prepare that. So if we have got  
24 one that has those, we could do that at the end,

1 if you want.

2 HEARING OFFICER HALLORAN: So you  
3 are going to submit a redacted stipulation of  
4 facts without the numbers?

5 MR. HARSCH: Yes.

6 HEARING OFFICER HALLORAN: Okay.  
7 All right. And I see it is marked trade  
8 secret/non-disclosable information across the  
9 front.

10 I am going to grant that motion  
11 subject to the Board's final approval, and also  
12 Mr. Harsch did indeed give me an affidavit that I  
13 requested to supplement his May 6th filing of a  
14 motion to mark the trade secret and  
15 non-disclosable information.

16 So I will grant that, and I am  
17 going to mark it as Hearing Officer Exhibit 2, and  
18 as soon as, I guess, Mr. Harsch gets back to the  
19 office and hopefully sometime this week, he will  
20 send it along to the Board.

21 (Whereupon, HEARING OFFICER  
22 Exhibit No. 2 was marked for  
23 identification and admitted  
24 into evidence.)

1 MR. GRANT: I wonder if I could  
2 respond to something Mr. Harsch said. Just for  
3 the record, we are going to object to either the  
4 production of or use of the written tax materials.  
5 They were withheld from us for about nine months.  
6 It took two motions to compel. We finally worked  
7 out an agreement where I did not get copies of  
8 them, but where I was able to go to Mr. Harsch's  
9 office and take a look at them.

10 And we did so. I pulled out  
11 information that I didn't think was prejudicial or  
12 personal for these people, and that's what we  
13 created a stipulation from. As far as using other  
14 information in the documents -- actually using the  
15 document, I have no problem with him preparing his  
16 witness with them prior to hearing, but as far as  
17 using them in hearing or trying to enter them into  
18 evidence for any purpose, we are going to very  
19 strongly object to that.

20 HEARING OFFICER HALLORAN: Okay. I  
21 don't have anything in front of me yet, nor have I  
22 heard Mr. Harsch mention anything, so -- yeah,  
23 regarding the tax returns. All I heard was we are  
24 going to use these numbers regarding the

1 stipulation with the numbers in there.

2 I know we had a conference call  
3 the other day, and it was mentioned, but so far  
4 today I haven't been privy to anything.

5 MR. GRANT: Sure. Just to let you  
6 know our position, I had one other request -- and  
7 if Mr. Harsch would agree to this. Ordinarily one  
8 attorney handles all the examination for one  
9 witness. I was planning on putting the tax  
10 information in with Mr. Dominic Imburgia. If he  
11 is not going to testify, I would like to be able  
12 to handle that part of the examination with the  
13 witness that's on the stand, if there is no  
14 objection to that.

15 MR. HARSCH: I don't have any  
16 objection.

17 MR. GRANT: Thank you. I appreciate  
18 it.

19 HEARING OFFICER HALLORAN: So,  
20 Mr. Harsch, anything further on any kind of  
21 preliminary matters?

22 MR. HARSCH: I don't believe so.

23 HEARING OFFICER HALLORAN: Okay.  
24 Great. Just let me know when you get into the

1 non-disclosable stuff, and we will seal the room.  
2 You may proceed.

3 BY MR. HARSCH:

4 Q. Mr. Imburgia, would you please state  
5 your full name for the record?

6 HEARING OFFICER HALLORAN: Can the  
7 court reporter please swear Mr. Imburgia in,  
8 please?

9 (Whereupon, the witness was duly  
10 sworn.)

11 JOSEPH IMBURGIA,  
12 having been first duly sworn, was examined and  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HARSCH:

16 Q. Okay. Mr. Imburgia, please state  
17 your full name for the record.

18 A. Joseph Dominic Imburgia.

19 THE COURT REPORTER: Can you spell  
20 that, please, the last name?

21 THE WITNESS: I-M-B-U-R-G-I-A.

22 BY MR. HARSCH:

23 Q. And you've testified in previous  
24 hearings?

1           A.       Yes, I have.

2           Q.       What is your current position in  
3 Packaging?

4           A.       General manager of operations.

5           Q.       And what is entailed, just briefly,  
6 in your job description? What do you do?

7           A.       I am in charge of manufacturing  
8 administrative functions at Packaging Personified,  
9 which entail the manufacture of flexible packaging  
10 and some systems that allow that to get out the  
11 door.

12          Q.       And when you previously testified  
13 what was your position at Packaging?

14          A.       I believe I was already general  
15 manager at that time.

16          Q.       And have you held any other  
17 positions at Packaging?

18          A.       I was originally in sales, and I was  
19 also a plant manager.

20          Q.       Can you describe briefly what  
21 Packaging's business is?

22          A.       We are a manufacturer of flexible  
23 packaging. That means we take resin, low density  
24 polyethylene types of resins, and we make film out



1 of it and from there we might print that film. We  
2 would convert that film, which entails cutting it  
3 and sealing it and shaping it into different  
4 finished product configurations for customers to  
5 use. The finished product is used in the food  
6 industry, bread bags, ice bags, et cetera.

7 Q. So you are referring then to the --  
8 what the consumer would call the plastic bag the  
9 loaf of breads comes in?

10 A. Yes.

11 Q. Does Packaging print all of the film  
12 that it produces?

13 A. No.

14 Q. Does Packaging -- strike that.

15 Approximately, what amount of  
16 your film that you produce gets printed?

17 A. Approximately, one-third.

18 Q. When you print that, do you print  
19 the entire -- with the film or --

20 A. No. It would depend on the  
21 customer's design. Most of the time, it's  
22 actually much less than the entire package.

23 Q. Without getting into specific  
24 numbers, can you quantify the percent of the gross

1 sales that would be attributed to film that is not  
2 printed?

3 A. I would have to approximate that to  
4 be about two-thirds of our overall sales,  
5 potentially slightly more.

6 Q. You heard the Hearing Officer read  
7 the questions that the Board posed and directed  
8 the parties to respond to this morning?

9 A. Yes, I did.

10 Q. You have previously read the Board's  
11 opinion?

12 A. Yes, I have.

13 Q. At issue is the shutdown of press 4  
14 and the transfer of business from press 4 to press  
15 5. When did you shut down press 4?

16 A. Approximately, December of 2002.

17 Q. And that was when you stopped using  
18 press 2 as a printing press?

19 A. Press --

20 MR. GRANT: Do you mean press 4?

21 BY MR. HARSCH:

22 Q. Press 4. Excuse me.

23 A. Correct.

24 Q. Before you there is a stack of

1 exhibits, I believe. I have previously marked  
2 Respondent's Exhibit 59. Would you take a look at  
3 that?

4 A. Yes.

5 Q. And did you prepare this document?

6 A. Yes, I did.

7 Q. And can you explain what it is?

8 A. The top half of the document is  
9 information that I took off of a report that had  
10 the information titled VOC Reporting to Edwin C.  
11 Bakowski, IEPA, provided through Mostardi & Platt,  
12 May 13th, 2009, a FESOP Application Request.

13 MR. HARSCH: And I believe that is  
14 Exhibit 49 in the -- in this case, the actual  
15 FESOP application, Respondent's Exhibit 49.

16 MR. GRANT: I have Respondent's 49  
17 as being a letter dated May 13th, 2009. Is that  
18 the FESOP ap?

19 MR. HARSCH: Yes.

20 MR. GRANT: Okay.

21 BY MR. HARSCH:

22 Q. Would you explain what you were  
23 intending to show through that -- the information  
24 that you obtained from what was marked as --

1 accepted as Exhibit -- Respondent's Exhibit 49?

2 A. Yes. This -- this report --

3 HEARING OFFICER HALLORAN: Excuse  
4 me. Respondent's Exhibit 59 or 49?

5 MR. HARSCH: It's from Exhibit 49.

6 MR. GRANT: It's Respondent  
7 Exhibit 59 taken from Respondent's Exhibit 49.

8 HEARING OFFICER HALLORAN:  
9 Mr. Imburgia is reading off of Respondent's  
10 Exhibit 59?

11 MR. GRANT: Correct.

12 HEARING OFFICER HALLORAN: Thank  
13 you.

14 BY THE WITNESS:

15 A. I attempted to use the VOC reporting  
16 information that had been collected and captured  
17 back at that point in time, and submit it to the  
18 EPA to develop a relationship or correlation  
19 between years when we had known production and  
20 correlating the VOC emissions to the amount of  
21 production that we had in our printing area.

22 BY MR. HARSCH:

23 Q. So this chart would have been then  
24 from your records at that time of the VOC

1 emissions in tons per year?

2 A. Correct.

3 Q. And looking at it, it would show  
4 then no emissions from press 4 in 2003?

5 A. Correct.

6 Q. It's in the prior record. Presses 1  
7 and 2 were the water-based presses?

8 A. Correct.

9 Q. And can you explain what the lower  
10 table is in Respondent Exhibit -- what's marked as  
11 59?

12 A. Yes. The lower table is collecting  
13 the VOC information from press 4 and press 5 and  
14 adding it to become a total amount of VOC.

15 Q. And are those figures from monthly  
16 records that Packaging maintains?

17 A. I obtained these figures from the  
18 document that I referred to, the FESOP application  
19 request. That document had been prepared by Rich  
20 based on purchase records that were readily  
21 available at the time.

22 Q. And the lower table for those  
23 various columns, are those monthly numbers?

24 A. Yes. The lower table was the

1 information available from our production records  
2 that at this point in time only go back to year  
3 2000 for pounds produced out of the press room,  
4 the off-line presses. And I correlated that  
5 information of pounds produced compared to VOC  
6 reported to come up with a relationship. That  
7 relationship is shown in the very bottom row as  
8 61.82, 55.42, 75, et cetera. I then averaged from  
9 year 2000 to 2003 to come up with 60.81. 60.81 is  
10 pounds of material produced per VOM, if I am  
11 remembering my math correctly.

12 MR. HARSCH: I would at this point  
13 in time move for entry of Respondent's Exhibit 59.

14 HEARING OFFICER HALLORAN: State?

15 MS. SANGHA: No objection.

16 HEARING OFFICER HALLORAN: Okay.

17 Thank you. So admitted. Respondent's Exhibit 59  
18 is admitted.

19 (Whereupon, RESPONDENT'S Exhibit  
20 No. 59 was admitted into  
21 evidence.)

22 BY MR. HARSCH:

23 Q. Next, turning your attention to what  
24 I have marked as Respondent's Exhibit 60 that's in

1 front of you, and can you explain -- did you  
2 prepare this document?

3 A. Yes. This is part of an ongoing  
4 record that we have kept, and it is an  
5 accumulation or a total of both pounds and footage  
6 produced for the off-line presses gathered on a  
7 monthly basis since the year 2000 to the current  
8 year.

9 Q. And by off-line presses, those would  
10 be the solvent-based flexographic presses?

11 A. Correct. Press -- what have been  
12 referred to as press 4 and press 5.

13 Q. And subsequently have you added  
14 additional presses?

15 A. Yes. We have added a press. In  
16 2003 it started in production. We refer to it as  
17 press 6. We have also added a press in 2000 --  
18 sometime in 2012 referred to as press 7.

19 Q. And those presses are ducted and  
20 controlled by the RCO unit that we have previously  
21 testified to?

22 A. Yes, they are.

23 Q. Is press 5 currently in operation?

24 A. No, it is not.

1 Q. Is Respondent's Exhibit 60 a true  
2 and accurate copy of your -- a printout of your  
3 record?

4 A. Yes, it is.

5 MR. HARSCH: I will move for the  
6 admission of respondent Exhibit 60.

7 HEARING OFFICER HALLORAN: State?

8 MS. SANGHA: No objection.

9 HEARING OFFICER HALLORAN: Okay.

10 Thank you. Respondent's Exhibit No. 60 is  
11 admitted.

12 (Whereupon, RESPONDENT'S Exhibit  
13 No. 60 was admitted into  
14 evidence.)

15 HEARING OFFICER HALLORAN:

16 Mr. Harsch, could you give me a brief summary of  
17 exactly what this table -- I know it's from his  
18 ongoing record, but for Board purposes where I can  
19 mark it?

20 BY MR. HARSCH:

21 Q. It is a record of the monthly  
22 production by year in both press -- pounds of  
23 product and press footage, footage beginning with  
24 2005. Is that correct?



1           A.       Yes, it is.

2           Q.       And you -- Packaging -- does  
3 Packaging weigh the film that it prints?

4           A.       Yes. Every role of film that's  
5 printed is weighed immediately as it leaves the  
6 press as part of a production record to track both  
7 efficiency and waste.

8           Q.       And I see that your footage record  
9 only goes back to 2005. Why is that?

10          A.       It was determined by someone who was  
11 an employee of Packaging Personified, Tim Piper,  
12 that the previous records were less than accurate  
13 because of the method of collecting that  
14 information at the time.

15          Q.       Mr. Piper previously testified in  
16 this proceeding?

17          A.       Yes, he has.

18          Q.       Was that method an estimate based on  
19 footage of -- or the square footage of printed  
20 material?

21          A.       There is a meter on the front of the  
22 press that actually counts the footage, but our  
23 discipline in capturing that number on a  
24 consistent basis was not very effective.

1 Q. There is a box down at the bottom of  
2 that table in red. What is -- can you explain  
3 what that is?

4 A. Since this is an important ongoing  
5 record of production, any changes to it we try to  
6 notate and make sure that it's as obvious to  
7 someone who would read it as to what it is. Tim  
8 had actually eliminated the footage totals for  
9 previous years as erroneous and we made the note  
10 that that change was made.

11 Q. Okay. The production records  
12 maintained in pounds in the upper portion of this  
13 table, for the -- what does it show that you  
14 printed in 2003?

15 A. 2003, it shows a total of  
16 6,024,683 pounds per year.

17 Q. And if you compare that figure with  
18 all of the previous years going back to 1995, in  
19 pounds, as shown in Exhibit 60 and Exhibit 59,  
20 what does that show in terms of --

21 A. It shows that the pounds produced --  
22 excuse me.

23 The pounds produced in 2003  
24 exceeded the pounds produced out of the press room

1 in all previous years.

2 Q. What conclusion do you draw from  
3 that?

4 A. We grew in sales, and produced it  
5 out of our press room.

6 Q. And you produced it in 2003 using  
7 only press 5?

8 A. Correct.

9 Q. Do you believe that Packaging had  
10 the capability of not operating press 4 beginning  
11 in 1995 and transferring all of the business to --  
12 and all the production to press 5?

13 A. Based on what we did in 2003, yes, I  
14 do.

15 Q. Can you explain to the Board what a  
16 typical operation is for a shift in operating  
17 either press 4 or press 5 or any other presses,  
18 for that matter?

19 A. Can I refer to one of the other  
20 documents?

21 Q. In general, first, sure.

22 A. Okay. So it's --

23 Q. In fact, we might as well go to that  
24 document. If you look at Respondent Exhibit 61,

1 did you prepare this document?

2 A. Yes, I did.

3 Q. And can you explain what  
4 Respondent's Exhibit 61 is?

5 A. Yes. What this is, is based on  
6 known outputs, averages and some assumptions, what  
7 we would anticipate average production to be along  
8 with the average number of changeovers, including  
9 startup and shutdown for the piece of equipment.  
10 These assumptions were shown for both press 4 and  
11 press 5, and individually shown for a one-shift  
12 operation, a two-shift operation and a three-shift  
13 operation for press 4, and a one, two, three and a  
14 four-shift operation for press 5.

15 Q. And these assumptions were based on  
16 your experience as managing the press room?

17 A. Yes.

18 Q. Press 4 is -- is press 4 a slower  
19 press than press 5?

20 A. Yes, it was.

21 Q. Did press 4 print less colors than  
22 press 5?

23 A. Yes, it did.

24 Q. If a press has an average run speed,

1 what do you expect to -- what speed do you  
2 actually run that press?

3 A. It varies from item to item, based  
4 on design, based on difficulty of print, but we  
5 would like to see us run anywhere from 70 percent  
6 up to very, very occasionally 100 percent. If we  
7 average close to 80 percent, we are generally  
8 pretty darn happy.

9 Q. And what number did you use in  
10 preparing Exhibit 61?

11 A. I used 80 percent and 85 percent,  
12 based on the differences in the presses and their  
13 age.

14 Q. In general terms, is press 5 a newer  
15 press than press 4?

16 A. Yes. Press 5 was newer and based on  
17 its years of service or the fact that it was  
18 newer, it was more reliable at that point in time.

19 Q. Are there any differences in the  
20 efficiency of operation?

21 A. Yes. We would expect because of its  
22 increased reliability, that it's more efficient  
23 than its -- than the other piece of equipment, as  
24 well as the fact that it was -- as it was built,

1 it was a newer machine, had newer technology and  
2 had more capacity nameplate as far as its highest  
3 speed and its changeover time.

4 Q. Can you explain what setup time is  
5 per color, that column?

6 A. Setup time per color is an estimated  
7 amount of time required to take -- from sleeves or  
8 cylinders in and out of a press and change inks in  
9 and out of a press to go from one custom job to  
10 another custom job.

11 Q. How long do your job runs normally  
12 last?

13 A. They vary significantly, but we will  
14 have jobs that might last in printing terms less  
15 than an hour to -- of full production time of  
16 printing to jobs that might last almost a full  
17 day.

18 Q. Is that typical for the flexographic  
19 printing industry?

20 A. Yes, it is.

21 Q. And what expected setup time did you  
22 use for press 4?

23 A. Expected setup time for press 4 was  
24 45 minutes per color.

1 Q. And for press 5?

2 A. 15 minutes per color.

3 Q. Why is there a difference?

4 A. Press 5 actually had features  
5 referred to in technical terms in our industry as  
6 automatic grafting, meaning that you could load a  
7 new cylinder and actually tell the press what size  
8 cylinder it was, and it would know how to bring  
9 that cylinder in position to begin your setup.  
10 That saved a significant amount of time while we  
11 were setting the piece of equipment up.

12 It also had what was referred to  
13 as a preregistration feature, automatic gear  
14 meshing, and based on the same information, it  
15 would also rotate the cylinder in the gear so that  
16 when they were engaged at setup, they were very,  
17 very close to proper registration. Both were  
18 features that were not available on the other  
19 press.

20 Q. And the next column, expected  
21 average daily setup time, can you explain what  
22 that is and how you arrived at that?

23 A. All I did was multiply the number of  
24 colors that we would have typically set up during

1 a shift by the expected amount of time that it  
2 would take to set up the colors per piece of  
3 equipment.

4 Q. Was press 4 a three-color press?

5 A. Press 4 had four decks that were  
6 utilized or capable of being utilized. On average  
7 we ran less than four colors based on what was  
8 available to print.

9 Q. And you used three colors?

10 A. Three colors was just an average  
11 number that was most typical.

12 Q. And on press 5 you are showing it --  
13 as I understand it, an average number would be  
14 five colors?

15 A. Correct.

16 Q. If you transferred a job from press  
17 4 to press 5 that only was three colors, what  
18 effect does that have on the average setup time?

19 A. That would mean that the job would  
20 be -- and I would anticipate that a three-color  
21 job setup on press 5 would be up and running in  
22 the amount of time it took to get one of the  
23 colors set on press 4.

24 Q. And the next column is entitled,



1 estimated total hours scheduled. That's eight  
2 hours per day, correct?

3 A. Correct.

4 Q. Estimated end of a shift startup and  
5 shutdown cleaning time. Can you explain what that  
6 is?

7 A. When you shut down one of these  
8 pieces of equipment, you actually have to drain  
9 ink out of each station and wipe off that station,  
10 wipe off the anilox rollers, recover all of the  
11 inks so that they can be used or reused, you know,  
12 at a later date or at startup, and then those have  
13 to be secured into each storage area, and you have  
14 to make sure that the -- generally we will wipe  
15 down what's called the nip roller and the drum and  
16 basically put the machine into a clean and  
17 organized state before we walk away from it.

18 Q. And -- and that would be true -- you  
19 have to clean it then if you are operating on a  
20 one-shift or two-shift per day basis?

21 A. If you stop running the piece of  
22 equipment, you need to make sure that all of the  
23 ink is very carefully removed and that it's  
24 cleaned off of any surfaces so it doesn't dry on

1 the equipment, because it can damage the equipment  
2 if it dries on it.

3 Q. Does the -- if you operate a press  
4 around the clock 24 hours, then do you have to  
5 clean it up that day?

6 A. No, because you never create an  
7 opportunity for the inks to dry and on a piece of  
8 equipment you will go from one color to another  
9 color in transition, which is counted in our setup  
10 time.

11 Q. If you operate then on a three-shift  
12 basis, but don't operate over the weekends, do you  
13 have to clean it up then when you shut it down at  
14 the end of the week then?

15 A. Yes, you do. At any point in time  
16 when you are going to shut down a piece of  
17 equipment to actually not operate it for any  
18 extended period, several hours, then you have to  
19 do a complete wash down.

20 Q. And that's reflected in the number  
21 of hours you have in that column?

22 A. Correct.

23 Q. What does the next column, expected  
24 net daily run hours, mean?

1           A.       Basically, you take all of the  
2           assumptions. You take the available hours for the  
3           day, you subtract the setup time that is  
4           anticipated, you subtract the shutdown time,  
5           startup time, that is anticipated, you multiply it  
6           by the -- well, I'm sorry. Did you ask for the  
7           net daily run hours?

8           Q.       Expected net daily run hours.

9           A.       Yeah. Take the total available  
10          hours, subtract the setup time and any other down  
11          time that would be expected.

12          Q.       And then the next column is just the  
13          number of days per week on a one-shift basis,  
14          two-shift, whatever?

15          A.       Correct.

16          Q.       What is the next column, expected  
17          end of week startup and shutdown PM and cleaning  
18          time?

19          A.       There is a more extensive cleaning  
20          that would be done on a weekend type shutdown  
21          where you go through more activities on the press  
22          to make sure that for that period of time it  
23          was -- it was, you know, prepared -- properly  
24          prepared to not run.

1 Q. And that's the same number whether  
2 you are operating one, two or three shifts?

3 A. Correct.

4 Q. The next column, expected daily  
5 output, can you explain what that is? I'm sorry.

6 Expected net weekly run hours.

7 A. Expected net weekly run hours is,  
8 again, the net daily hours, times the number of  
9 days available, minus the weekend shut up/start  
10 down -- startup/shutdown activity.

11 Q. And the next column, expected daily  
12 output, can you explain how you arrived -- what  
13 that is and how you arrived at it?

14 A. Expected daily output is the daily  
15 hours -- I believe I might have an error in my --  
16 the title of that column. Seven times -- yeah. I  
17 believe that's weekly. Someone can -- I believe  
18 that's a weekly number.

19 So expected net weekly run hours  
20 times the run rate at its expected efficiency  
21 number. So the effective run rate times the  
22 hours.

23 Q. And expected monthly output?

24 A. Expected monthly output is to take

1 that exact amount of weekly output times the  
2 available weeks in a month.

3 Q. And then the average weight, how is  
4 that used then to arrive at the last column?

5 A. That is the average weight for  
6 1,000 feet based upon historical records, and we  
7 took the total amount of footage, multiplied it by  
8 the average weight to come up with an amount of  
9 pounds that would generally be associated with  
10 that amount of weight, that amount of footage.

11 Q. If you compare then the output at --  
12 is the last table then the amount of production  
13 you would expect and actually be able to produce  
14 through the normal operations that you just  
15 described on a one-shift, two-shift, three-shift  
16 basis?

17 A. Yes, it is.

18 Q. At the time you shut down press 4,  
19 was it operating in approximately two shifts or  
20 three shifts?

21 A. I believe it was a two-shift  
22 operation.

23 Q. And does the lower columns then show  
24 the expected capacity in pounds of product printed

1 for press 5 on a one, two, three and four-shift  
2 basis?

3 A. Yes. It's all of the same  
4 assumptions with the different -- specific  
5 information regarding the different -- the only  
6 differences are a difference in setup time, a  
7 difference in efficiency and expected run rate.

8 Q. At the time you shut down press 4,  
9 the end of 2002, what was press 5 operating at in  
10 terms of normal shift operation?

11 A. I believe it was three shifts, but  
12 I'm not positive.

13 Q. Historically then going back to --  
14 if I understand Exhibits 59 and 60, the production  
15 was greater in 2003, and 2002 was slightly less;  
16 is that -- am I correct?

17 A. Yes, you are.

18 MR. GRANT: I am going to object on  
19 the basis of leading. He is testifying as to what  
20 he wants the information to be.

21 HEARING OFFICER HALLORAN:

22 Mr. Harsch?

23 MR. HARSCH: I just asked the  
24 question, was 2002 less than 2003, and was 2002

1 greater than all the previous years before that.

2 MR. GRANT: He is testifying.

3 HEARING OFFICER HALLORAN: Yeah. It  
4 is leading, Mr. Harsch. If you could rephrase it.  
5 Objection sustained.

6 BY MR. HARSCH:

7 Q. Can you please go through the  
8 production records that you had presented in  
9 Respondent's Exhibit 59 and explain what you  
10 believe to be the relationship between the output  
11 production from press 4 and as it relates in the  
12 previous years to 2002?

13 A. Yes. As far as press 4, it shows  
14 zero production in 2003, and press 5 shows  
15 significantly more production than it did in  
16 previous years.

17 Q. Can you draw a conclusion regarding  
18 the expected capacity in pounds of production from  
19 press 4 even on your maximum production on a  
20 three-shift basis -- two-shift and three-shift  
21 basis as compared to press 5 operating on a  
22 four-shift basis?

23 A. Well, I think the best answer to  
24 that question is the empirical information. In

1 2003, we only ran press 5. In 2003, we ran more  
2 production out of the press room than we had run  
3 in any previous year in the company's history.

4 So I was pleasantly surprised at  
5 that point in time, but I believe that the best  
6 information and the best way to answer that  
7 question is the empirical evidence that we  
8 produced more in 2003 than we ever had in the  
9 company's history only utilizing press 5.

10 Q. And Exhibit 61 would show the  
11 maximum -- what you think would be the maximum  
12 production on press 5 over a four-shift operation?

13 A. Yes, I believe that to be a  
14 conservative estimate of what I would anticipate  
15 our production capability to be.

16 Q. Were you responsible -- who at  
17 Packaging was responsible for purchasing press 5?

18 A. I was involved in purchasing press  
19 5.

20 Q. Were you involved in purchasing  
21 press 6?

22 A. Yes, I was.

23 Q. And press 7?

24 A. Yes.



1 Q. Can you explain how you go about  
2 buying a press -- Packaging buys a press?

3 A. Yes. Actually, in the purchase of  
4 any capital equipment, we would evaluate what we  
5 believe to be the most effective technology  
6 available in the industry or available to the  
7 industry, and then compare the investment cost for  
8 that, the operating cost for that, to what our  
9 current operating costs are, and trying, within  
10 our budget, to buy the most effective technology  
11 available.

12 Q. In very general terms, what are the  
13 differences in -- are there differences in  
14 improvements between presses 4, 5, 6 and 7?

15 A. Similar to computers, technological  
16 advancement in printing presses have been  
17 significant over the past, you know, 15 to  
18 20 years and continues to be very, very  
19 significant, and things that are focused on by  
20 capital equipment suppliers in trying to develop a  
21 press that, you know, is saleable are energy  
22 efficiency, ergonomics, automation.

23 So they basically are -- and  
24 they will put together in their effort a return on

1 investment for the end users, and they will give  
2 you the opportunity to plug in your numbers, cost  
3 of electricity, cost of gas, cost of labor. They  
4 will give you an opportunity to plug in numbers to  
5 help validate their assumptions.

6           And presses are faster to set  
7 up. Presses require less footage to waste to set  
8 up. They utilize less energy. They have become  
9 more ergonomically efficient requiring less labor  
10 to be able to produce higher output; changes in  
11 the mandrel system that allows a press to print.  
12 Based on advancements in carbon fiber, reduced  
13 bouncing, which means that there is less  
14 mechanical stress that allow presses to run  
15 faster. Our newest press can run 1486 feet per  
16 minute, as opposed to our oldest press' top speed  
17 mechanically available was 600 feet per minute on  
18 press 4. It was 900 feet per minute on press 5.  
19 It is 1144 feet per minute on press 6. They  
20 become faster, use less energy to the extent that  
21 it has been my practice to prefer to replace  
22 capacity, as opposed to add capacity.

23           Q.       Can you explain that, please?

24           A.       There comes a point in time when you

1 evaluate whether operating an older, less  
2 efficient piece of equipment makes monetary sense,  
3 compared to the cost of actually totally replacing  
4 its capacity with another piece of equipment that  
5 would potentially gain you an additional  
6 50 percent in capacity, but with the same labor,  
7 potentially with less waste, potentially with less  
8 energy usage to achieve all of the same things.

9 Q. At the time you purchased press 5,  
10 were you aware of the environmental regulations  
11 that applied to press 5?

12 A. No. Unfortunately, I was not.

13 Q. Were you given any guarantees  
14 regarding expected emissions from press 5 in terms  
15 of complying with environmental regulations?

16 A. No, I was not.

17 Q. Was -- is press 5 a -- what we refer  
18 to as a recirculating oven press?

19 A. Yes, it was.

20 Q. Will you explain what that is?

21 A. Press 5 had the ability to return  
22 exhaust air from the drying sections back to --  
23 before the oven section, it would take the air and  
24 heat it up, allowing not only warm air to enter

1 the oven, but also, as it was explained to me --  
2 but allowing for heat to be generated from the  
3 consumption of the VOCs through the process.

4 Q. Are those VOCs -- that's the -- from  
5 the solvent that's used to apply the ink to the  
6 substrate?

7 A. Yes.

8 Q. So press 5 then when you purchased  
9 it was sold to you as a press that would save  
10 energy by this recirculating function?

11 A. Yes. That's one of the things that  
12 was evaluated when we were trying to determine  
13 which piece of equipment to buy, was energy  
14 efficiency, reliability of design, et cetera.

15 Q. Up until the time that press 5 was  
16 modified to hook up to the control device that you  
17 testified to in the earlier hearing, did you  
18 always operate press 5 in this recirculated  
19 manner?

20 A. Yes, we did.

21 Q. Was there, in fact, any ability to  
22 operate it otherwise?

23 A. Not to my knowledge.

24 Q. If a given amount of ink is applied

1 to a square footage of substrate, is it necessary  
2 to provide -- where does the energy come from to  
3 evaporate the solvent that's in that ink as  
4 applied to the --

5 A. The energy to evaporate the solvent  
6 that's -- or the ink that's applied to the  
7 press -- or to the film, I'm sorry, comes from the  
8 oven. So any air entering the oven needs to be  
9 heated to a certain temperature to create an  
10 environment that will allow that solvent to  
11 evaporate.

12 Q. Is it always necessary to dry the  
13 ink, evaporate the solvent, when you are doing  
14 flexographic printing?

15 A. Yes, it is.

16 Q. In layman's term, is that because  
17 the -- when you roll it up, it would smear or --

18 A. Yeah. It just won't be dry. It's  
19 like painting a wall. You need it to dry before  
20 you can use it.

21 Q. In press 4, where did that energy  
22 come from?

23 A. In press 4, it was -- the intake air  
24 was ducted directly from outside fresh air, and we

1 would take whatever the normal temperature air of  
2 the day was and heat it to the necessary  
3 temperature to dry the ink.

4 Q. And what did you use to heat the  
5 air?

6 A. It was a natural gas oven.

7 Q. And in press 5, where did the energy  
8 come from?

9 A. A lot of the energy, based on my  
10 understanding of the process, was -- was -- a lot  
11 of the need for energy was reduced in the mere  
12 fact that the heated air was recirculated, and  
13 then additional energy was reduced by the fact  
14 that VOCs could be used for energy to create heat.

15 Q. So producing the same amount of  
16 square footage with the same amount of ink applied  
17 would cost Packaging less in press 5 than press 4?

18 A. That's what I would anticipate.

19 Q. What happened to the workers -- when  
20 you shut down press 4 at the end of 2002, what  
21 happened to your workers that previously worked on  
22 press 4?

23 A. They were trained to run on press 5  
24 for the additional shifts required. Some of them

1 were actually absorbed into other areas of the  
2 press room, because we ended up with more people  
3 than we needed at that point in time.

4 Q. Take a look at, please, the --  
5 what's marked as Exhibit 64 in front of you, which  
6 is Mr. McClure's letter to Mr. Simon dated  
7 August 9, 2012, and attached to that letter, the  
8 last page. Are you familiar with this document,  
9 the last page?

10 A. The very last page, yes, I am.

11 Q. And what is that document?

12 A. That's a bill for the -- the testing  
13 of our oxidizer that was conducted in 2004.

14 Q. And that was the testing of the  
15 oxidizer that press 5 and press 6 were hooked up  
16 to?

17 A. Press -- yes. Press 5 and press 6,  
18 correct.

19 Q. And was this provided to Mr. McClure  
20 by Packaging?

21 A. Yes, it was.

22 Q. And that's the cost of the stack  
23 test?

24 A. Yes, it was.

1 Q. As far as you know, that's true and  
2 accurate?

3 A. Yes, absolutely.

4 Q. Do you recall whether or not  
5 Packaging applied for the -- do you recall  
6 Packaging applying for the ATUs as part of the  
7 ERMS program?

8 A. Yes, I have --

9 MR. GRANT: I am going to object on  
10 the basis of relevance. We have very limited  
11 issues in this case, and none of them has anything  
12 to do with ATUs. Maybe you can explain, Mr.  
13 Harsch, but we are not going to retry 2009.

14 MR. HARSCH: No. I'm just -- we  
15 will get to it in the question.

16 HEARING OFFICER HALLORAN: You may  
17 proceed.

18 BY MR. HARSCH:

19 Q. And that was previously testified to  
20 by Mr. Piper?

21 A. Yes.

22 Q. Did Packaging receive a bill from  
23 Illinois EPA to purchase the emissions ERMS  
24 credits?



1 A. Yes, I believe we did.

2 Q. And did you pay that bill?

3 A. Yes, I believe so.

4 Q. And would you or would Mr. Trzupek  
5 be a better witness to testify to as to the basis  
6 for that -- the application and the -- how those  
7 credits were calculated.

8 A. Unfortunately, Mr. Trzupek.

9 MR. HARSCH: Okay. I will defer the  
10 question. At this point in time, I have no  
11 further direct questions.

12 MR. GRANT: Can we have a short  
13 break?

14 HEARING OFFICER HALLORAN: All  
15 right. I didn't hear what Mr. Harsch said. At  
16 this point I am going to --

17 MR. HARSCH: I have no  
18 further direct.

19 HEARING OFFICER HALLORAN: Okay.  
20 Thank you. For how long? Because we started  
21 late.

22 MR. GRANT: Five minutes.

23 HEARING OFFICER HALLORAN: Off the  
24 record for five minutes.

1 (Whereupon, a short break was  
2 taken.)

3 HEARING OFFICER HALLORAN: We are  
4 back on the record. People, you are up.

5 CROSS-EXAMINATION

6 BY MS. SANGHA:

7 Q. Okay. This is Nichole Sangha for  
8 the Attorney General's Office. I am going to do  
9 the cross-exam of Joseph Imburgia.

10 Mr. Imburgia, you are familiar  
11 with annual emissions reports?

12 A. Yes, I am.

13 Q. And you are aware then that these  
14 were your annual emissions reported to the  
15 Illinois EPA each year with the data from the  
16 prior year?

17 A. Yes.

18 Q. Right. And those are done each  
19 year. So, say, for 2002 you would report that the  
20 next year before May 1st of that year?

21 A. Yes, I believe so.

22 Q. Yes?

23 A. Okay.

24 Q. That's fine. You report it at the

1 first part of the next year?

2 A. Okay. Yes.

3 Q. And would you agree that Packaging  
4 uses the best available data that it has on its  
5 facility and the emissions when it goes to do that  
6 reporting to the Illinois EPA?

7 A. Yes, it does.

8 Q. And for the period at issue in this  
9 case, 1995 or part of the period at issue in this  
10 case, 1995 to 2001, those annual emissions reports  
11 weren't done in the year that they were -- would  
12 have been due to be reported, because you were not  
13 aware of your obligations at that time?

14 A. Correct.

15 Q. And in 2002, 1995 to 2001, those  
16 annual emissions reports were created  
17 retroactively?

18 A. Correct.

19 Q. But when you did that reporting in  
20 2002, you used the data that was the best  
21 available data to you that you had at that time to  
22 do that retroactive reporting?

23 A. Yes, we did.

24 Q. I want to ask you about this chart

1 that you have marked as Respondent's Exhibit 59.

2 From what I understand, this  
3 number 60.1 that you have on here, that's a factor  
4 that you created where you took the data that --  
5 for the years where you had the data both VOM and  
6 of pounds of substrate, you created a relationship  
7 between those two things and created this factor?

8 A. Yes, I did.

9 Q. And then will you agree that at one  
10 time this was a cover sheet to a series of  
11 additional charts that broke down per year,  
12 different estimations?

13 A. Yes, it is.

14 Q. And when previously we had some  
15 questions about that document, we looked back at  
16 the years 1995 to 2001 where you had taken this  
17 response factor or this relational factor and you  
18 had taken pounds of substrate, which is data that  
19 you had and attempted to calculate VOM emissions  
20 from press 4 and press 5 based on this factor.  
21 Isn't that right?

22 A. Actually, I was attempting to  
23 re-create the pounds of production based on the  
24 available VOCs.

1 Q. Pounds of production based on  
2 available VOCs?

3 A. Since -- when this information was  
4 requested, we don't have production pound  
5 information earlier than 2000 today. So I was  
6 asked to try and generate information with regards  
7 to operating hours and -- and a lot of other  
8 information that was not readily available to me.  
9 So I tried to take the information that was  
10 available and --

11 Q. Create some estimates?

12 A. -- create some estimates. So the  
13 VOC emissions that are in this table are based on  
14 information that was reported to the IEPA back in  
15 2009 when the information was more readily  
16 available. The information that generated this  
17 table also were actual purchase records. So it  
18 was more empirical information. The information I  
19 was missing was the amount of pounds produced out  
20 of the press room, production pounds produced out  
21 of the press room prior to 2000.

22 Q. But in order to get to production  
23 pounds out of the press room, you first estimated  
24 pounds of VOM from each press. That was the first

1 stop on your series of calculations?

2 A. No. The VOM per press I took from  
3 this table. What I did was based on the VOM from  
4 this table, which is reported for press 4 and  
5 press 5 individually, I then estimated the amount  
6 of pounds of substrate that were produced that --  
7 based on the amount of VOM that was reported.

8 Q. But in order to get the estimated  
9 footage, you did that by press, correct?

10 A. I did that by press.

11 Q. And so for each press you have to  
12 attribute a certain amount of VOM to that press in  
13 order to be able to make the calculation of  
14 estimated footage?

15 A. Correct. But I took the VOM  
16 information from this first table, and that table  
17 was old information that had been reported to IEPA  
18 through Mostardi & Platt on May 13th of 2009 as  
19 part of the FESOP application.

20 Q. But you didn't take the allocation  
21 per press from that. You generated that yourself?

22 A. No. The allocation per press I took  
23 based on this document, which was our FESOP  
24 application, if I am reading it correctly.

1           Q.       Do you recall that we discussed the  
2 numbers in that chart, and we compared them to the  
3 annual emissions report, and there was a  
4 discussion about the fact that your chart differed  
5 substantially from what was in the annual  
6 emissions report?

7           A.       I do recall that, during the  
8 deposition that there was some questions with  
9 regards to how numbers tied up, yes.

10          Q.       And that --

11                 MR. HARSCH: I will object unless  
12 you can be more specific. I think you stated  
13 earlier that there were a number of charts that  
14 were discussed during the deposition, and you are  
15 referring to a single chart here.

16                 HEARING OFFICER HALLORAN: These are  
17 things we've seen.

18                 MR. HARSCH: All I would like is  
19 when you are referring to the charts, try to be  
20 specific as to which chart you are referring to.

21                 MS. SANGHA: Okay. Well, you  
22 submitted just the cover page to what was an  
23 extended report in which this response factor was  
24 applied to a series of -- to calculate a series of

1 numbers.

2                   When you just have the response  
3 factor it's difficult to tell what happens to that  
4 factor when you begin to apply it to real numbers.  
5 We can submit the full chart into evidence and ask  
6 questions about that, or I can just ask general  
7 questions related to when this response factor was  
8 applied, it did not yield results that were  
9 consistent with any of the other records that were  
10 in evidence.

11                   HEARING OFFICER HALLORAN: You know,  
12 I think, I am going to overrule that objection.  
13 Mr. Harsch, you can qualify it on redirect if need  
14 be. Thank you. You may proceed.

15 BY MS. SANGHA:

16                   Q.       So wouldn't you agree that when we  
17 looked at the estimated pounds of VOM in press 4  
18 and press 5 that were in your charts that were  
19 originally attached to this cover sheet, they  
20 differed substantially from the annual emissions  
21 report?

22                   A.       I do recall that there were some  
23 differences identified at that point in time, but  
24 without that information, I can't speak to exactly



1 what those differences were.

2 Q. Do you recall being deposed on May  
3 1st, just a few weeks ago in this case?

4 A. Yes, I do.

5 Q. And that when you were asked this  
6 question: "And you would agree that the numbers  
7 that you reported in a good faith effort to  
8 provide information, regardless of that, the  
9 numbers that you have differed pretty  
10 substantially from the numbers that were reported  
11 in 2002?" Answer: "Yes."

12 A. Yes. I recall the conversation. I  
13 don't recall exactly which numbers we were  
14 referring to at the time. I do recall the  
15 additional charts that you are referring to that  
16 back this up, and the part that was not estimated  
17 was the VOM. The VOMs were taken from this first  
18 chart. The part that was estimated was the pounds  
19 produced of -- production pounds produced.

20 Q. Mr. Imburgia, when did you create  
21 this chart that's Exhibit 59?

22 A. I don't see a date on it, but it was  
23 relatively recent. It was requested of me within  
24 the last six months, I believe.

1 Q. So you prepared it for use  
2 specifically in this case?

3 A. Yes, I did.

4 Q. And when did you create Respondent's  
5 Exhibit 60?

6 A. That's been an ongoing record since  
7 at least 2000 where the -- where the data is --  
8 starts.

9 Q. And when did you put it together in  
10 this format?

11 A. It's actually been in this format  
12 since it was created.

13 Q. And Respondent's Exhibit 61, when  
14 did you create this chart?

15 A. Very recently, just prior to my  
16 deposition.

17 Q. Just prior to your deposition. So  
18 you had this chart when we took your deposition?

19 A. Yes.

20 Q. And you produced this chart just for  
21 use in this case; isn't that true?

22 A. Yes.

23 Q. I would like to ask questions now  
24 about a document that we don't yet have marked,

1 but we would like to introduce as our next  
2 exhibit, which would be Complainant's Exhibit 21,  
3 and I would first ask the witness some questions.

4 MR. GRANT: Will you stipulate to  
5 that?

6 MR. HARSCH: I believe these are all  
7 documents that are still in the record.

8 MS. SANGHA: This is not in the  
9 record.

10 MR. GRANT: We stopped, I think, at  
11 2001, which would have been submitted in 2002.

12 HEARING OFFICER HALLORAN: Okay.  
13 What you handed me, Mr. Grant, was just the  
14 exhibits from the last hearing?

15 MR. GRANT: No. These are the  
16 exhibits we are using at the hearing today that we  
17 are going to move in.

18 HEARING OFFICER HALLORAN: I just  
19 thought I heard Complainant's Exhibit No. 21.

20 MR. GRANT: They consist of --

21 MS. SANGHA: It's not in the binder.

22 HEARING OFFICER HALLORAN: They  
23 consist of what? I'm sorry.

24 MR. GRANT: The original evidence

1 documents of both complainants and respondents  
2 from the 2009 hearing that were all admitted and  
3 new ones that I have marked going forward from the  
4 last complainant's exhibit that we used in 2009.

5 So they are all -- so we will  
6 make sure -- and we have got the chart as to  
7 what's in. I marked the exhibits for 2009 with  
8 the identical number, which is why they are not  
9 sequential. So those we know are in. The ones we  
10 don't have in, we will move in. So it's a little  
11 confusing, but --

12 HEARING OFFICER HALLORAN: It's  
13 really confusing.

14 MR. GRANT: It would have been more  
15 confusing if I marked -- started with one and  
16 there was Exhibit 18 from the --

17 HEARING OFFICER HALLORAN: Anyway.  
18 We are getting this all down. So I will have to  
19 take a look at it, but in any event, proceed.

20 Exhibit 21.

21 MS. SANGHA: May I hand the document  
22 to the witness?

23 HEARING OFFICER HALLORAN: Yes, you  
24 may.

1 BY MS. SANGHA:

2 Q. Mr. Imburgia, you said you are  
3 familiar with annual emissions reports?

4 A. Yes.

5 Q. Do you recognize the document in  
6 front of you?

7 A. Yes.

8 Q. What is it?

9 A. It appears to be an annual emission  
10 report for 2003.

11 Q. And is that your name listed as a  
12 contact in the paragraph there on the first page?

13 A. Yes, it is.

14 Q. And you are listed as well as a cc  
15 on the bottom?

16 A. Yes.

17 Q. And if you will turn to the second  
18 page, is that your signature there?

19 A. Yes, it is.

20 MS. SANGHA: I would like to move  
21 this into evidence as Complainant's Exhibit 21.

22 HEARING OFFICER HALLORAN: Any  
23 objections, Mr. Harsch?

24 MR. HARSCH: No.

1 HEARING OFFICER HALLORAN:

2 Complainant's Exhibit 21 is admitted.

3 (Whereupon, COMPLAINANT'S  
4 Exhibit No. 21 was admitted  
5 into evidence.)

6 BY MS. SANGHA:

7 Q. Joe, if you will, turn to --  
8 Mr. Imburgia turn to the third page of this  
9 document. That gives the -- Packaging's annual  
10 emissions for 2003. Would you agree?

11 A. Yes.

12 Q. And the total emissions for the  
13 source for that year were identified as 50.69 tons  
14 for the year?

15 A. Yes, I see that.

16 Q. If we look at your Exhibit No. 59,  
17 you have listed as total emissions from press 5  
18 only as 59.84?

19 A. Yes, I do.

20 Q. Would you agree that that number is  
21 higher than the total emissions that were reported  
22 for that year for the facility?

23 A. Yes.

24 Q. That's all that I have for the

1 annual emissions report. I would like to turn  
2 your attention now to an exhibit that's already in  
3 evidence. That's Respondent's Exhibit 12 from the  
4 prior hearing, and it should be in your books.

5 A. This book?

6 Q. Yes, that's correct.

7 The document that we are looking  
8 at is dated December 16, 2002. Mr. Imburgia,  
9 would you agree that this is a letter from your  
10 counsel at the time to Illinois EPA on behalf of  
11 Packaging?

12 A. I apologize. I want to make sure I  
13 am on the correct document.

14 Q. Sure. Take your time.

15 MR. HARSCH: I am lost. Where are  
16 you?

17 MS. SANGHA: Respondent's Exhibit 12  
18 in your book.

19 MR. HARSCH: Complainant or  
20 respondent?

21 MS. SANGHA: Not complainant,  
22 respondent. This is Packaging's exhibit.

23 HEARING OFFICER HALLORAN:  
24 December 16, 2002?

1 MS. SANGHA: Correct.

2 MR. GRANT: They are not sequential.  
3 The respondent ones are after the complainant  
4 ones.

5 BY THE WITNESS:

6 A. December 16th, 2002?

7 BY MS. SANGHA:

8 Q. That's correct.

9 A. Yes.

10 Q. And would you agree that this is a  
11 letter from Packaging Personified to the Illinois  
12 EPA from Packaging's counsel at the time?

13 A. Yes, it is.

14 Q. And if you will turn to the second  
15 page, it's noted that in this document -- I want  
16 to point out that on the last sentence of the  
17 fourth paragraph it notes that the information  
18 included in the attachments is readily available.  
19 Specifically, it says, two readily available and  
20 relevant production records are the aggregate  
21 weight of plastic film processed in each press  
22 each year and the linear feet of film run through  
23 each press each year.

24 And would you agree that those



1 are the records that you keep at Packaging?

2 A. The aggregate weight --

3 Q. The aggregate weight of plastic film  
4 and linear feet of production of film?

5 A. Yes, it is.

6 Q. And that your counsel was  
7 representing to Illinois EPA in this letter that  
8 those were readily available records at the time  
9 that this letter was submitted?

10 A. Correct.

11 Q. Let's turn to the chart that's  
12 attached to the letter. I would like to look  
13 specifically --

14 MR. HARSCH: Hold on a second.

15 HEARING OFFICER HALLORAN: Off the  
16 record.

17 (Whereupon, a discussion was had  
18 off the record.)

19 HEARING OFFICER HALLORAN: Back on  
20 the record.

21 BY MS. SANGHA:

22 Q. Mr. Imburgia, I would like to focus  
23 on the -- the attachment that's two boxes, a chart  
24 on the top, chart on the bottom. The one on the

1 top that says production, and underneath that the  
2 columns that say production and in parentheses  
3 feet. And underneath that you have listed for  
4 1999, 2002 -- through 2002, year to date, the  
5 production of feet from each press. Do you see  
6 that?

7 A. Yes.

8 Q. And would you agree that for the  
9 years 2000 and 2001 in physical production in feet  
10 press 4 was producing approximately 43 percent of  
11 the production for those two years, specifically  
12 43.7 in 2000 and 43 percent exactly in 2001?

13 A. Yes.

14 Q. And that in 2002, year to date, and  
15 again, the date of this letter was December 16th,  
16 2002, so at the end of the year here, the  
17 production in feet for press 4 has actually  
18 surpassed the production in feet for press 5?

19 A. Yes.

20 Q. So in 2002 just before the press was  
21 shut down, Packaging was relying pretty heavily on  
22 press 4?

23 A. We produced an equal amount of  
24 product on press 4 according to these records.

1 Q. And potentially even more product on  
2 press 4?

3 A. Correct.

4 Q. And would you agree that operating  
5 two presses at your facility gives Packaging more  
6 flexibility in terms of running its packaging and  
7 printing operations, how many orders you can take,  
8 how many --

9 A. If we are referring to the total  
10 capacity of our facility including both pieces of  
11 equipment, yes.

12 Q. Greater flexibility. And that -- it  
13 also would help in terms of if you had a  
14 maintenance problem on one press, you wouldn't  
15 have to stop all your solvent printing just to fix  
16 that maintenance problem. You could continue  
17 operating?

18 A. If that were to occur, yes.

19 Q. And so -- and would you agree also  
20 that in the past 20 years since 1993 Packaging has  
21 always operated two presses other than the one  
22 year in 2003 that Packaging was required to shut  
23 down press 4?

24 A. To the best of my knowledge, yes.

1 Q. And that at the time that this  
2 enforcement action originally began, when press 4  
3 was shut down in 2002, Packaging made some  
4 representations to the agency at that time that  
5 their intention was to replace press 4 with press  
6 6?

7 A. Correct.

8 Q. And that your intention when press 5  
9 was taken out of commission recently was to  
10 replace press 5 with press 7?

11 A. Correct.

12 Q. So each time you have taken a press  
13 out of commission, it's been your intention to  
14 replace that press with another?

15 A. Correct.

16 Q. And so, therefore, to always be  
17 operating two presses at the facility?

18 A. That's how it's worked out, yes.

19 Q. So Packaging is really a two-press  
20 operation?

21 A. I don't know what you mean by that.  
22 We have operated two presses, yes.

23 Q. You have relied on two presses all  
24 of the last 20 years other than with the exception

1 of the one year?

2 A. Correct.

3 Q. And you have needed those two  
4 presses to meet your customer demand?

5 A. Based upon what we did in 2003, I  
6 can't say that.

7 Q. Mr. Imburgia, I think covered under  
8 direct exam was your involvement in the purchase  
9 of press 5?

10 A. Yes.

11 Q. So you were the primary person  
12 involved in the researching and purchasing of that  
13 press?

14 A. Yes.

15 Q. And you were the primary person to  
16 have conversations with Uteco related to the  
17 purchase of that press?

18 A. Yes.

19 Q. And you can confirm that they never  
20 claimed that it would destroy volatile organic  
21 compounds?

22 A. It was not part of the discussion.

23 Q. And they never gave you a specific  
24 percentage then of volatile organic compounds that

1 would be destroyed?

2 A. No, they did not.

3 Q. They never made any claims about its  
4 ability to meet federal or state standards related  
5 to air pollution?

6 A. No.

7 Q. And that -- they never gave you a  
8 guarantee related to the capacity of the  
9 recirculating drying to control volatile organic  
10 materials?

11 A. No, they did not.

12 Q. Okay. There was no manufacturer's  
13 guarantee related to the recirculating dryer and  
14 its control capacity?

15 A. There was no manufacturer's  
16 guarantee regarding the controlling or destruction  
17 of VOCs.

18 Q. Yes. That's what I am asking.

19 A. Right, yep.

20 Q. Thank you. In your position that  
21 you are talking about the control capacity of  
22 press 5, that's coming from the test that Trzuppek  
23 ran, the informal test on press 5?

24 A. Yes, it is.

1 Q. That's the only source of your  
2 information about the control capacity of press 5?

3 A. Yes, it is.

4 Q. It did not come from the  
5 manufacturer?

6 A. It did not.

7 Q. I want to turn your attention now to  
8 what's Complainant's Exhibit 9 from the prior  
9 hearing. I want to focus on the section related  
10 to press 5, which I have given a red tab in your  
11 books to help everyone find it.

12 All right. Mr. Imburgia, this  
13 is the section of your 2002 permit application  
14 from Packaging Personified to the Illinois EPA.

15 A. Is it marked 4.1-1 in the top right  
16 corner?

17 Q. That's correct.

18 And I'm sorry. I skipped over  
19 on the first page there; just to orient us, this  
20 document dated June 28th, 2002, it should be the  
21 very first page of that exhibit, and can you  
22 confirm that that's your name listed there in the  
23 paragraph indicating that you can be contacted for  
24 further information about this?

1           A.       Yes, I am.

2           Q.       Okay. Now, turning back to 4.1-1,  
3           which is the red tab, Section 4, it lists the name  
4           of the emission unit that's being discussed in the  
5           section, solvent-based ink press number 5.

6                     Do you agree that that's press  
7           number 5 that's at issue in this case?

8           A.       Yes.

9           Q.       And if you will turn over a couple  
10          of pages to 4.1-5, in paragraph 31 you are asked  
11          to give an explanation of how emission compliance  
12          is to be or was previously demonstrated, and you  
13          list there a manufacturer's guarantee?

14          A.       Yes. It's listed manufacturer's  
15          guarantee.

16          Q.       It's listed manufacturer's  
17          guarantee, but no manufacturer's guarantee  
18          existed; isn't that correct?

19          A.       That is correct.

20          Q.       And if you will turn a few more  
21          pages to Section 4.2-1, this is Bates stamped IEPA  
22          page 364, if that helps.

23          A.       4-2- --

24          Q.       4.2-1.



1           A.       Yes.

2           Q.       And this is the section of your  
3 permit that dealt with air pollution control  
4 equipment. And under Section 4 where you list the  
5 name of the unit, name of air pollution control  
6 equipment and/or control system, you identify  
7 there the internal thermal oxidizer?

8           A.       Yes, that's what's on this document.

9           Q.       And it's connected -- and in other  
10 places on this page the manufacturer is listed as  
11 Uteco. The construction operation here is listed  
12 as 1995. The next page on number 11, the unit  
13 that's listed as controlling is solvent-based ink  
14 press number 5. Can we read that this internal  
15 thermal oxidizer listed here was intended to  
16 indicate the recirculating dryer on press 5?

17          A.       I believe so.

18          Q.       And if you will turn one page, in  
19 paragraph 22 you again list that compliance,  
20 initial compliance, is demonstrated or was  
21 previously demonstrated through a manufacturer's  
22 guarantee. Box 22?

23          A.       Yes.

24          Q.       And you even say specifically that

1 the internal thermal oxidizer will destroy  
2 90 percent of VOM?

3 A. Yes. That's how it's filled out.

4 Q. But the manufacturer never indicated  
5 that the recirculating dryer would destroy  
6 90 percent of VOM, correct?

7 A. No, they did not.

8 Q. And below that again in paragraph  
9 23, you again reference a manufacturer's  
10 guarantee. It states under an explanation of how  
11 ongoing compliance will be demonstrated, Packaging  
12 indicates, under normal operating conditions, the  
13 thermal -- internal thermal oxidizer will continue  
14 to destroy 90 percent of the VOM based on the  
15 manufacturer's guarantee.

16 If you will turn over two more  
17 pages, in the box that is box number 30,  
18 subsection B?

19 A. Yes.

20 Q. For efficiency determination you  
21 point to the manufacturer's guarantee here two  
22 more times, both related to capture and control.  
23 Would you agree?

24 A. Yes.

1           Q.       But there was no manufacturer's  
2 guarantee, even though it's indicated five times  
3 in this permit application?

4           A.       No, not a manufacturer's guarantee  
5 regarding destruction of VOC.

6           Q.       And the manufacturer didn't  
7 guarantee the VOC destruction of the recirculating  
8 dryer, because it wasn't originally designed to  
9 destroy VOCs; isn't that correct?

10          A.       As it was explained to me, it was  
11 designed to burn some of the VOCs to generate  
12 heat.

13          Q.       It was designed to be an efficient  
14 dryer?

15          A.       Actually, it was presented to me  
16 that it would burn some of the VOCs to generate  
17 heat, reducing gas consumption.

18          Q.       But it wasn't created as a control  
19 device for the press?

20          A.       No. I believe -- if I may,  
21 regarding what we are talking about, as far as a  
22 manufacturer's guarantee and all this stuff,  
23 unfortunately, I actually don't fill these  
24 documents out, and how this, I believe, got

1 started is -- and the thought to test was a result  
2 of a comment that I brought to Rich saying, the  
3 manufacturer told me that this press will burn  
4 VOCs in place of burning gas or to reduce the gas  
5 consumption. It was based upon that, that further  
6 testing and investigation was done.

7 Q. But now I have clarity that no  
8 manufacturer's guarantee was given relating to the  
9 destruction of VOCs?

10 A. Yeah. No guarantee of destruction  
11 of VOCs or control of VOCs, just a guarantee that  
12 it would burn some VOCs to reduce reliance on  
13 natural gas.

14 Q. And Packaging relied upon the  
15 manufacturer's guarantee in a permit dated  
16 June 2002, even though you had done an informal  
17 test in December of 2001; isn't that right? The  
18 informal test was in December of 2001.

19 A. I don't recall the order of events,  
20 and we mainly relied on expert support and what  
21 information was brought to us in generating these  
22 documents.

23 Q. But you can agree that there is no  
24 reliance in the June 2002 application on the

1 informal test that was done by Rich Trzupek?

2 A. I don't know the order of events  
3 with regards to when this document was generated  
4 and when the test was done.

5 Q. Okay. Well, it's in the record that  
6 the test was done in December of 2001.

7 A. Okay.

8 Q. This document is dated June of 2002.

9 A. Okay. So if the test was done in  
10 2001, and this document was created in 2002, my  
11 assumption would be that Rich took that into  
12 account when generating these forms.

13 Q. But it's not listed here as your  
14 compliance -- your basis for compliance. Each  
15 time you are asked for a basis for compliance, you  
16 list the manufacturer's guarantee.

17 A. That appears to be what's being said  
18 here, yes.

19 Q. And would you agree that all of your  
20 presses have some sort of drying system on the  
21 press?

22 A. Yes.

23 Q. And that press 6, the newer Comexi  
24 press actually also has a recirculating dryer?

1           A.       Yes.  It does have a method of  
2   recirculating heat.

3           Q.       And that when press 6 was sold to  
4   you, it was sold to you based on similar sales  
5   points as press 5, that this was an efficient  
6   dryer.  This would be good for your business.  It  
7   wasn't sold on the basis of being a capture  
8   control device?

9           A.       No.  Absolutely it was not sold as a  
10   capture and control device.  It was sold as an  
11   efficient method of recapturing heat.

12          Q.       And there were similarities in the  
13   way that press 6 was sold to you as the way that  
14   press 5 was sold to you?

15          A.       Yes, similarities, but when press 5  
16   was sold to me, one of the things that was told to  
17   me was that it would actually consume some of the  
18   solvent in the process to generate heat.

19          Q.       But neither press made any --  
20   neither seller made any representation about the  
21   control of VOCs?

22          A.       No, they did not.

23          Q.       And when you bought press 6, it was  
24   immediately -- the emissions were immediately

1 routed to the RTO?

2 A. Correct.

3 Q. So it was never operated without an  
4 external control device?

5 A. Correct.

6 Q. And don't you think that if Uteco  
7 had thought that the recirculating dryer on press  
8 5 could function as a capture and control device,  
9 they would have added that as a sales point when  
10 they sold it to you?

11 MR. HARSCH: I'll object to the  
12 question. It calls for the conclusion of the  
13 witness.

14 HEARING OFFICER HALLORAN:

15 Sustained.

16 BY MS. SANGHA:

17 Q. Would you agree that there would be  
18 value in the sale of a press -- if that press had  
19 an internal control, that would be something that  
20 you would market if you were to sell a press?

21 MR. HARSCH: I'll object to the  
22 question.

23 HEARING OFFICER HALLORAN:

24 Sustained.

1 BY MS. SANGHA:

2 Q. Let's move on to what's marked as  
3 Complainant's Exhibit 16 in your books.

4 Mr. Imburgia, do you recognize  
5 this?

6 A. Yes.

7 Q. What is it?

8 A. It is our -- what we refer to as  
9 press 5, that is listed for sale through a  
10 machinery broker.

11 Q. So this is an ad for -- actually for  
12 press 5 that's at issue in this case?

13 A. Yes.

14 Q. Which is now for sale?

15 A. Yes.

16 Q. And am I correct in understanding  
17 that it's not operable at the facility anymore?  
18 It's not in operation?

19 A. Correct.

20 Q. But that it remains operable?

21 A. Yeah, we would have to do some work  
22 to get it back up in production, but yes.

23 Q. It could be put back into  
24 production?



1           A.       It could be put back into  
2           production.

3           Q.       For example, as the ad says at the  
4           very bottom there, can be seen in running  
5           condition, you could put it back in action to show  
6           it to someone?

7           A.       Yes.

8           Q.       And also that in the list of  
9           specifications you identify this is the second  
10          paragraph here, other specifications in the  
11          middle, that it has a gas drying system of  
12          recirculating ovens?

13          A.       Yes.

14          Q.       And that's the recirculating dryer  
15          that we have been discussing in this case?

16          A.       I believe that might be part of it.  
17          I am not completely sure, only because I do know  
18          when we hooked up the oxidizer that there were  
19          modifications made to press 5 to hook it into the  
20          oxidizer.

21          Q.       So you didn't return press 5 to its  
22          original condition?

23          A.       No.

24          Q.       So at this point in time you are not

1 sure that press 5, the recirculating dryer, would  
2 continue to function as it did prior to being  
3 hooked up to the oxidizer?

4 A. I don't believe it would.

5 Q. Do you have an opinion about whether  
6 or not at this point you believe it would control  
7 VOCs?

8 A. Based upon the modifications that  
9 were made, I don't believe it would have the same  
10 effect on consuming some of the VOCs. When we  
11 hooked up the oxidizer, one of the things that  
12 allows the regenerative thermal oxidizer to run  
13 efficiently is the fact that it needs air that is  
14 solvent-laden and any unnecessary consumption or  
15 reduction of the solvent content in the air would  
16 reduce the efficiency of the oxidizer, causing it  
17 to use more natural gas.

18 Q. Okay. So your opinion is that in  
19 its prior construction, the recirculating dryer  
20 would have operated as a control?

21 A. In its prior construction --

22 Q. Prior construction.

23 A. It would have -- based on my  
24 knowledge, would have consumed some of the VOC

1 content in the effort of creating heat for  
2 operating the system.

3 Q. Some of the VOC content, but  
4 specifically you are saying enough of the VOC  
5 content that it would function as a control device  
6 that would pass Illinois' regulations for control?

7 A. I can't speak to that. The only  
8 thing I can say is that I know it was -- that Rich  
9 performed an informal stack test that indicated it  
10 consumed, you know, a fair amount of VOC.

11 Q. Okay. I would like to ask you about  
12 your decision not to perform a test -- not to  
13 perform a formal test. What I understand is that  
14 there is -- an informal test was done in 2001, and  
15 that date is in the record, and that in December  
16 of 2002, you moved all of your operations from  
17 press 4 to press 5 and that if your expert is  
18 correct, it would have only cost you \$11,180 at  
19 that time to perform a test on press 5 to make  
20 certain that it was a control device compliant  
21 with the Illinois regulations?

22 A. I believe so, yes.

23 Q. So in December of 2002, even though  
24 you were running all of your solvent-based

1 printing production on the one press, Packaging  
2 did not think it was important at that time to run  
3 a formal compliance test to make sure that that  
4 press was compliant?

5 A. We were considering prior to 2002  
6 the purchase of an eight-color press. None of our  
7 presses were capable of producing eight colors,  
8 and at that time, the intention was to have a  
9 grand compliance plan to -- to go to a thermal  
10 oxidizer, as well as permitting a new press, and  
11 we bundled those activities together.

12 Q. But that press didn't come on-line  
13 until 2004, right?

14 A. I believe 2004, yes.

15 Q. So that's a pretty big gap where you  
16 have a press running all of your solvent-based  
17 printing with a very open question about  
18 compliance?

19 A. We were operating based upon the  
20 advice that we were given.

21 Q. And in 2004 when you installed press  
22 6, Packaging created a permanent total enclosure  
23 for the facility; is that true?

24 A. Yes, it is.

1 Q. And what I understand from the  
2 estimates from Mr. McClure is that part of the  
3 cost of running a formal compliance test would be  
4 to create a temporary total enclosure?

5 A. Yes.

6 Q. But that if you have a permanent  
7 total enclosure, that portion of the test is  
8 essentially moot?

9 A. Correct.

10 Q. So in 2004 when you created the  
11 permanent total enclosure, it would have only cost  
12 you \$6,180, give or take for inflation, to perform  
13 a formal compliance test on press 5 at that time?

14 A. That sounds right.

15 Q. So you could have tested it prior to  
16 ducting it to the oxidizer?

17 A. Correct.

18 Q. Don't you think that would have been  
19 a simpler way of resolving this issue related to  
20 press 5?

21 A. Hindsight, yes. We were following  
22 what we thought was sound advice as the best way  
23 to approach the situation we were in.

24 Q. But Packaging did not make a

1 decision to test press 5 before hooking it up to  
2 the oxidizer?

3 A. No.

4 Q. Even though in that year your gross  
5 profits were significant, as we will talk about in  
6 just a minute?

7 A. Again, frankly, I didn't realize  
8 that the -- what we refer to now as the informal  
9 stack test wasn't a good enough test. We had done  
10 a test, and based on my understanding at that  
11 point in time, you know, we had done everything we  
12 were supposed to do, and we were moving forward in  
13 the process of trying to meet the State's  
14 expectations and grow our business. In hindsight,  
15 everything would have been easier.

16 Q. So in 2004 -- strike that.

17 Mr. Imburgia, you did  
18 participate in the meetings with Illinois EPA  
19 following the violation notice that you received?

20 A. I participated I recall in at least  
21 one meeting with the EPA down in Springfield.

22 Q. And at the time that we filed this  
23 lawsuit, you would have been aware that a lawsuit  
24 had been filed against Packaging Personified?

1 A. Oh, yes, absolutely.

2 Q. So you were aware at least to some  
3 extent that the State and the Illinois EPA were  
4 not satisfied with the informal test?

5 A. I can't say that. Honestly, I  
6 thought that the years in question were the years  
7 we have operated without a permit, and that was  
8 the majority of issue.

9 MS. SANGHA: I would like to move  
10 Complainant's Exhibit 16 into evidence, the ad  
11 advertising press number 5.

12 HEARING OFFICER HALLORAN: Okay.  
13 Wasn't this already in evidence in the older --

14 MS. SANGHA: It wasn't. Chris just  
15 reminded me.

16 HEARING OFFICER HALLORAN: All  
17 right. Where did we leave off from the last  
18 hearing in 2009?

19 MR. GRANT: 14.

20 MS. SANGHA: 14.

21 HEARING OFFICER HALLORAN: 14.

22 MR. GRANT: For Complainant.

23 HEARING OFFICER HALLORAN: Okay.

24 Mr. Harsch, any objection?

1 MR. HARSCH: No.

2 HEARING OFFICER HALLORAN:

3 Complainant's Exhibit No. 16 is admitted.

4 (Whereupon, COMPLAINANT'S  
5 Exhibit No. 16 was admitted  
6 into evidence.)

7 MS. SANGHA: Now, as we discussed  
8 earlier, I am going to let Chris ask some  
9 questions about the tax documents.

10 MR. GRANT: It's confidential.

11 HEARING OFFICER HALLORAN: All  
12 right. At this point, I am going to ask that the  
13 court reporter indicate confidential in the  
14 transcript, and I am going to close the door and  
15 put a sign out for the public stating that this is  
16 a closed session and there will be a sign-up  
17 sheet, if need be.

18 (Whereupon, a discussion was had  
19 off the record.)

20 (Whereupon, confidential  
21 proceedings were had and are  
22 contained in a separately bound  
23 transcript marked  
24 confidential.)



1 HEARING OFFICER HALLORAN: We are  
2 back. It's approximately 1:16, May 21st  
3 continuing this hearing. I want to note for the  
4 record that we are done, I believe, with the  
5 non-disclosable tax return confidential testimony.  
6 I took the sign off of the door. So the public  
7 are welcome again, but there is no one here except  
8 for the actual parties and the witnesses and the  
9 attorneys.

10 With that said, Mr. Imburgia --

11 THE WITNESS: Imburgia.

12 HEARING OFFICER HALLORAN: -- is  
13 still on the stand and is still under oath.

14 MR. HARSCH: On cross-examination  
15 there were questions raised. I will have you look  
16 at --

17 HEARING OFFICER HALLORAN:  
18 Mr. Harsch, if you can hold on a minute.

19 Kari, I think we are on a new  
20 transcript. We are back on the old one?

21 THE COURT REPORTER: Yes.

22 HEARING OFFICER HALLORAN: We are  
23 not on a separate one?

24 THE COURT REPORTER: Right.



1 MR. GRANT: 60, thank you.

2 BY MR. HARSCH:

3 Q. There is no date of this attachment  
4 to the letter, is there?

5 A. No, there is not.

6 Q. This letter also -- or this  
7 attachment also references production in feet. Is  
8 that -- how does the -- how do these records  
9 relate to what you subsequently found in terms of  
10 reliability of the production in feet?

11 A. Unfortunately, I do not have footage  
12 records from prior to 2005, because the footage  
13 records were deemed to be less reliable.

14 Q. And that was by the environmental --  
15 the person you hired to manage your environmental  
16 affairs internally?

17 A. Correct.

18 Q. Tim Piper?

19 A. Correct, Tim Piper.

20 Q. I think he previously testified in  
21 this case.

22 A. Yes, he did.

23 Q. And did he go back through all of  
24 your records and try to reorganize them all?

1           A.       Yes, he did. He streamlined our  
2 compliance recordkeeping.

3           Q.       The Complainant's Exhibit 21, which  
4 is not in the book, it's the April 30th, 2004  
5 letter. I believe you have it up there.

6           A.       Complainant's exhibit what number?

7           Q.       21. It's the letter to the Agency.

8           A.       Yes. Yes, I do.

9           MS. SANGHA: Do we have this one?

10          MR. HARSCH: Your Exhibit 21.

11 BY MR. HARSCH:

12          Q.       This would have been on data -- this  
13 was prior to the time that Tim Piper had joined  
14 you, correct?

15          A.       Correct.

16          Q.       The data that you used -- your  
17 production data that you testified to that you  
18 used to prepare Exhibit 59, was that data after  
19 Tim Piper had gone to work for you and gone back  
20 through and changed your -- all your reporting?

21          A.       Yes, it was.

22          Q.       Would that explain the difference  
23 between the two documents?

24          A.       I believe it could explain the

1 difference.

2 Q. At the time that you were in --  
3 negotiating to buy press 5 there was absolutely no  
4 discussion regarding the ability of press 5 to  
5 comply with environmental regulations?

6 A. No, there was not.

7 Q. Did you under -- did you understand  
8 that press 5 by the person selling it to you  
9 absolutely destroyed some solvents by the  
10 recirculation to produce the heat?

11 A. Yes. That's how it was sold to us  
12 is that in the process of recirculating, that  
13 there would be some consumption of the solvents in  
14 the air to generate heat to heat the process.

15 Q. And that's what you subsequently  
16 relayed to Mr. Trzupek, your consultant?

17 A. Yes. I did relay that to  
18 Mr. Trzupek.

19 Q. And I think you previously testified  
20 that press 5 was energy efficient because of this  
21 recirculation of the heated air to the dryer plus  
22 the consumption of the solvent in -- as a result  
23 of the recirculating portion?

24 A. Yes, I did.

1 Q. Does press 6 operate in the same  
2 manner?

3 A. Press 6 recirculates heat, but there  
4 was never a claim by the manufacturer when we  
5 purchased that piece of equipment that it would  
6 actually burn any solvent, just that it would  
7 recirculate some heat.

8 Q. And you knew from day 1 that it  
9 would require a control device to comply with the  
10 regulations?

11 A. Yes.

12 Q. And the same is true with press 7?

13 A. Yes.

14 Q. As of December of 2003 or the  
15 February of 2004 timeframe, was -- were you aware  
16 that the Illinois Environmental Protection Agency  
17 did not accept the -- what we have been referring  
18 to as the informal stack test?

19 A. No, I did not.

20 MR. HARSCH: I have no further  
21 redirect.

22 HEARING OFFICER HALLORAN: Any  
23 further questions?

24 MR. HARSCH: No further redirect.

1 HEARING OFFICER HALLORAN: Thank  
2 you.

3 FURTHER RECROSS-EXAMINATION

4 BY MS. SANGHA:

5 Q. Just a couple questions.

6 Mr. Imburgia, from this chart  
7 it's my understanding that you no longer have  
8 records for production in footage for the years  
9 1999 to 2002 in your records?

10 A. Correct.

11 Q. But in 2002 when this letter was  
12 produced you had the records available to you from  
13 1999 to 2002?

14 A. Yes. We did have records.  
15 Although, it was determined at some point in time  
16 that those records were not the most accurate  
17 records that we had kept at that point in time.

18 Q. But you have no new records other  
19 than -- this is what I am asking, I guess.

20 The records that were created at  
21 that time and kept, you may have retained those  
22 records, but you don't have the new records from  
23 that -- those years?

24 A. No. We do not have new records.

1 The method of collecting footage and how it was  
2 used to measure efficiency was not the most  
3 disciplined effort in our facility, and it came at  
4 some point in time where we decided that those  
5 numbers were not very trusted numbers, and we  
6 changed our method of collecting that data in 2005  
7 to get more reliable information.

8 Q. But you couldn't go back in time and  
9 get new data with the years that had already  
10 passed?

11 A. No.

12 Q. So the data that you have for those  
13 years, that's the best available data that you  
14 have?

15 A. Yes. It's the only data that --

16 Q. It's the only data that's available?

17 A. It's the only data that exists.

18 Although, it's accepted to be less than reliable.

19 We use that information to measure shift

20 performance and evaluate, you know, people's

21 performance and progress, and it was determined

22 that because of that reason that it was not always

23 collected as effectively or faithfully as it was

24 supposed to, and that's why we have subsequently



1 eliminated that data.

2 MS. SANGHA: No further questions.

3 HEARING OFFICER HALLORAN: Thank  
4 you, Ms. Sangha.

5 Mr. Harsch, any redirect?

6 MR. HARSCH: No sir.

7 HEARING OFFICER HALLORAN: Thank  
8 you. You may step down.

9 THE WITNESS: Thank you very much.

10 HEARING OFFICER HALLORAN: Thank  
11 you.

12 THE WITNESS: Am I supposed to take  
13 this with me, or is this for the next person?

14 HEARING OFFICER HALLORAN: You can  
15 leave it up there.

16 If you will raise your right  
17 hand, the court reporter will swear you in.

18 (Whereupon, the witness was duly  
19 sworn.)

20 RICHARD TRZUPEK,  
21 having been first duly sworn, was examined and  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HARSCH:

1 Q. Mr. Trzupek, would you please state  
2 your full name for the record?

3 A. Richard Trzupek.

4 Q. And where are you presently  
5 employed?

6 A. I am employed as a principal  
7 consultant for Trinity Consultants, Inc., in  
8 Oakbrook Terrace, Illinois.

9 Q. And what are your -- briefly, what  
10 are your areas of expertise?

11 A. I specialize in air quality issues  
12 related to environmental regulation, including  
13 permitting, recordkeeping, reporting, litigation  
14 support and stack test management.

15 Q. And when did you leave -- when did  
16 you join Trinity?

17 A. May 7th of 2012.

18 Q. I previously marked and it should be  
19 60 -- Respondent's Exhibit 62. I think it's in  
20 front of you there.

21 A. Yes, I have it.

22 Q. That should be marked Respondent's  
23 Exhibit 62.

24 A. Yes, it is.

1 Q. Did you prepare this document?

2 A. I did.

3 Q. And can you explain what it is?

4 A. It's a supplemental expert report  
5 on -- that speaks to a view on control efficiency,  
6 emission test costs and the utilization of press  
7 number 5.

8 Q. And attached to the report is  
9 Appendix A. What is that document?

10 A. My curriculum vitae, as up to date  
11 as it is.

12 Q. And is this document true and  
13 accurate, to the best of your knowledge and  
14 belief?

15 A. Yes, it is.

16 MR. HARSCH: Before we go forward, I  
17 would -- do you have a problem if we enter it?

18 MR. GRANT: No. I have no  
19 objection.

20 MR. HARSCH: I'd move it then.

21 HEARING OFFICER HALLORAN:

22 Respondent's Exhibit No. 62 is admitted.

23

24

1 (Whereupon, RESPONDENT'S Exhibit  
2 No. 62 was admitted into  
3 evidence.)

4 MR. GRANT: Also, we would ask -- we  
5 have the identical exhibit as Complainant's  
6 Exhibit 20 -- I'm sorry -- 19. It should be the  
7 same thing. It's the one we filed before. So we  
8 would like to admit that one also.

9 HEARING OFFICER HALLORAN: Is it  
10 from the prior case?

11 MR. GRANT: No. It's the -- 19  
12 is -- let's see. It was one that was filed with  
13 the Board on 5/13 of 2013 as part of --

14 HEARING OFFICER HALLORAN:  
15 Complainant's Exhibit No. 19 is admitted without  
16 objection.

17 (Whereupon, COMPLAINANT'S  
18 Exhibit No. 19 was admitted  
19 into evidence.)

20 HEARING OFFICER HALLORAN: Is it the  
21 same CV, supplemental --

22 MR. GRANT: Yeah. Both of them  
23 were taken right off the -- right off the website.  
24 It looks to me to be identical.

1 MR. HARSCH: I haven't checked it  
2 word-for-word, but I believe it's the same  
3 document.

4 MR. GRANT: It was from his hearing  
5 report, prehearing report.

6 HEARING OFFICER HALLORAN: So no  
7 objection?

8 MR. HARSCH: Yeah, it looks like  
9 it's the same copy as the prehearing.

10 HEARING OFFICER HALLORAN: Without  
11 objection, Complainant's Exhibit No. 19 is  
12 admitted. It's the same document as Respondent's  
13 Exhibit 62.

14 You may proceed, Mr. Harsch.

15 BY MR. HARSCH:

16 Q. Mr. Trzupek, have you read the  
17 Board's questions that are contained in the Board  
18 Order granting the motion for reconsideration?

19 A. I have.

20 Q. And those are the questions that the  
21 Hearing Officer read off this morning?

22 A. Yes.

23 Q. The first question is, did the press  
24 5 tunnel dryer system constitute a capture system

1 and control device under 35 Illinois Admin Code  
2 Section 218.401(c)? You are familiar with that  
3 question?

4 A. I am.

5 Q. And do you have an opinion as to the  
6 answer to that or response to that question?

7 MR. GRANT: I am going to ask that  
8 before he answers the question I want to point out  
9 that this report does not contain any opinion  
10 about control. This is what was disclosed. I  
11 think it probably was in his 2009 report, but his  
12 opinion would have to -- what he testifies to  
13 would have to be in conformance with 2009. Unless  
14 I am wrong, but there is nothing in this opinion  
15 report that says this press complied with the rule  
16 or 60 percent control or capture or anything like  
17 that.

18 BY THE WITNESS:

19 A. And Mr. Grant, and it says beginning  
20 in number 2, as noted in my original expert  
21 report, press number 5 prior to its ducting as a  
22 new -- to a new control system was equipped with a  
23 recirculating drying oven that acted as a control  
24 device by oxidizing the VOM contained in the --

1 MR. GRANT: Yes. It's not in  
2 compliance with the rule. That's my point. My  
3 point is -- and I just want to clarify. And I  
4 know I have used up my quota of objections, but in  
5 the 2009 report I believe Joe actually said, in my  
6 opinion this controlled -- whatever the word is --  
7 capture and destruction efficiencies are. This  
8 doesn't have anything in here. It discusses  
9 things in general. It looks like a supplement,  
10 but it's not a new opinion. There is nothing in  
11 the opinion that says this is controlled.

12 BY THE WITNESS:

13 A. I believe Mr. Harsch's question was  
14 whether it was a capture or control device  
15 non-compliant with the rule.

16 HEARING OFFICER HALLORAN: I'm  
17 sorry, Mr. Trzupsek. Mr. Harsch?

18 MR. HARSCH: We submitted a  
19 supplemental report. It references his prior  
20 report. He is a witness in this case. It's in  
21 the record in this case.

22 MR. GRANT: My point is only his  
23 that opinion is a 2009 opinion. This is  
24 supplementing it, because it doesn't -- there is

1 nothing in this opinion that says that this met  
2 the control -- the capture and control devices of  
3 218.401. It just doesn't. There is no new  
4 information in here about that, and there is some  
5 stuff in here that could potentially bolster that  
6 previous opinion, but the opinion that you are  
7 talking about is the 2009 opinion.

8 MR. HARSCH: I just asked him if he  
9 had an opinion.

10 HEARING OFFICER HALLORAN: All  
11 right. The objection is overruled. You may  
12 proceed with Mr. Trzupsek.

13 BY MR. HARSCH:

14 Q. What's your understanding of the  
15 requirements, if you have one, of Section 35 Ill.  
16 Admin. Code Section 218.401(c) as it would apply  
17 to press 5?

18 A. It requires the use of a capture  
19 system and control device, and then it goes on to  
20 specify what the efficiency -- the capture  
21 efficiency and the destruction efficiency of those  
22 control devices are.

23 So if I understand your  
24 question, the first thing is -- the Board asks is,



1 does press number 5 qualify as a capture system  
2 and control device and my answer to that would be,  
3 yes, as defined in -- both are defined terms in 35  
4 IAC 211. It specifies what a capture system is  
5 and what a control device is. There is also --  
6 afterburner is a defined term as well, and my  
7 opinion is that the press number 5 recirculating  
8 oven meets all those definitions.

9 MR. GRANT: Just for the record, I  
10 am going to object to this as an undisclosed  
11 opinion, because it's not in the report.

12 HEARING OFFICER HALLORAN: All  
13 right. That's your second objection. That's the  
14 same thing.

15 MR. GRANT: I mean, you can overrule  
16 it. That's fine. I just want to make it clear  
17 that -- because I am going to point it out. It  
18 must be in the 2009 report, so --

19 HEARING OFFICER HALLORAN: Great.  
20 Objection noted and overruled. You may proceed.

21 BY MR. HARSCH:

22 Q. What is the purpose of -- as you  
23 would understand it, to install a -- require that  
24 a capture system and a control device be installed

1 on an air pollution source?

2 A. The purpose of the capture system is  
3 to collect the gaseous air pollution and duct it  
4 to a control device. The purpose of the control  
5 device is to remove the air pollutant or  
6 pollutants from that stream, either by destroying  
7 them or by collecting them in some manner.

8 HEARING OFFICER HALLORAN: You know,  
9 I would like to say to support my ruling -- and  
10 I'm not sure exactly what you meant, Mr. Grant,  
11 when you filed your prehearing memorandum, but I  
12 am looking at page 2, and under witnesses,  
13 complainant suggests that the parties agree to a  
14 broad scope of examination so that all testimony  
15 may be heard during the complainant's  
16 cross-examination, and --

17 MR. GRANT: No. I -- actually, I  
18 don't -- the -- I just noticed this, I don't know,  
19 a day or so ago, that this report doesn't -- I'm  
20 not trying to exclude his testimony. I understand  
21 what he testified to in 2009 and what he will  
22 testify to today. It's -- what I -- I want to  
23 know where -- which expert report it is, you know.

24 HEARING OFFICER HALLORAN:

1 Understood. And I ask the Board to take note of  
2 that.

3 MR. GRANT: Sure.

4 BY MR. HARSCH:

5 Q. You were told by -- did Mr. Imburgia  
6 tell you anything about the -- what he had been  
7 told about the operation of how the  
8 recirculating oven would function on press 5?

9 A. I was. Joe -- and my discussion was  
10 that press 5 -- press 5's tunnel dryer was a  
11 recirculating type, and that specifically it  
12 recirculated the south portion of the exhaust and  
13 used it as combustion air on the -- for the  
14 burners that heated the dryer, and that type of  
15 recirculation would destroy some or all of the VOC  
16 contained in the air.

17 Q. Do you understand -- do you know if  
18 it was possible to operate press 5 without  
19 operating in that recirculating mode?

20 A. Well, my understanding is it's not  
21 now. So reconfigured I think it was, but as it  
22 stood in 2002, I don't believe it was possible to  
23 operate without that recirculation.

24 Q. The -- you filled out the permit

1 applications that -- with respect to the  
2 application for the title 5 permit?

3 A. Correct.

4 Q. Which would be --

5 HEARING OFFICER HALLORAN: Is your  
6 mike on, Mr. Harsch? I know you are at a  
7 disadvantage.

8 BY MR. HARSCH:

9 Q. -- which would be the CAAPP  
10 application that you submitted --

11 THE COURT REPORTER: Which  
12 application? I'm sorry.

13 BY MR. HARSCH:

14 Q. And the --

15 HEARING OFFICER HALLORAN:

16 Mr. Harsch, she did hear the --

17 THE COURT REPORTER: What kind of  
18 application?

19 BY MR. HARSCH:

20 Q. CAAPP, C-A-A-P-P, and I believe  
21 that's Complainant Exhibit 9 in this proceeding;  
22 is that correct?

23 MR. GRANT: That is correct.

24

1 BY MR. HARSCH:

2 Q. You prepared this application?

3 A. That is correct.

4 Q. And there are references in here  
5 that Mr. Imburgia was asked about this morning  
6 where you listed manufacturer's guarantee. Is  
7 that correct?

8 A. That is correct.

9 Q. And what were you referring to when  
10 you filled out that application?

11 A. I was referring to the fact that it  
12 had a recirculating oven that used the  
13 recirculation for combustion air.

14 Q. Had you conducted the engineering  
15 stack test calculation?

16 A. I did.

17 Q. Prior to this application?

18 A. That is correct.

19 Q. And I would ask you to look at -- it  
20 would be their Bates stamp number page 370 of that  
21 exhibit.

22 A. I'm sorry. The number again?

23 Q. EPA 0370. It would be at Section  
24 4.2-7 of the application lettering.

1           A.       Yes, I have it.

2           Q.       In the middle of the page,  
3 efficiency determination, what did you mark down  
4 there for capture?

5           A.       For capture, it's -- I marked  
6 manufacturer's guarantee.

7           Q.       And what would be the -- what  
8 would -- what was your understanding of that at  
9 that time? What were you referring to?

10          A.       Well, when you are filling out the  
11 permit applications, and especially one like this  
12 where we are trying to get them into compliance  
13 and into the system as soon as possible, a  
14 manufacturer's guarantee for people in my business  
15 and for people in the permit section is shorthand  
16 for, this is what we believe the performance to be  
17 based on design.

18          Q.       And that would be referring to the  
19 design of the -- how the oven functioned that --  
20 to capture emissions?

21          A.       Correct.

22          Q.       And what did you fill out for  
23 control efficient?

24          A.       Same, manufacturer's guarantee.

1 Q. And what were you referring to  
2 there?

3 A. Again, based on the design, we  
4 believed that the design would meet their  
5 requirements of the rule.

6 Q. And for overall, what did you mark  
7 down?

8 A. Engineer's calculation.

9 Q. And what were you referring to  
10 there?

11 A. The actual tests that we had done to  
12 determine the overall.

13 Q. Is the use of the recirculating  
14 oven -- recirculating oven of press 5 unique to  
15 Packaging?

16 A. It is not.

17 Q. And what's your understanding of how  
18 common they are in the industry for flexographic  
19 printing?

20 A. I have seen them at other  
21 flexographic and lithographic printers. I  
22 couldn't put a percentage on it, but if it's not a  
23 majority of people that use recirculating ovens,  
24 then, you know, it's a significant fraction, I

1 guess I would say.

2 Q. Why would the purchase of a  
3 recirculating oven on a press such as press 5 be  
4 important to someone?

5 A. I think primarily because of the  
6 energy savings, because you need a certain amount  
7 of energy to run the tunnel dryer, and if you can  
8 get some of that energy back from the solvent that  
9 you are drying, it's going to be less natural  
10 gases.

11 Q. If I understand you correctly, you  
12 would, what, first bring the oven up to  
13 temperature with natural gas and then start  
14 drying?

15 A. That's my understanding, but I --  
16 I'm not an expert in press operations.

17 Q. Can you explain what the informal --  
18 I know you went into it in great detail at a prior  
19 hearing, but can you essentially explain -- well,  
20 put it this way.

21 What is entailed in doing a  
22 formal stack test?

23 A. It depends on what you are doing the  
24 test for.



1           Q.       Stack testing -- had they done a  
2 formal stack test on press 4 -- press 5. Excuse  
3 me.

4           A.       Press 5. Then typically the State  
5 would require demonstration of both capture and  
6 VOM destruction. The capture methodology would be  
7 most likely using a temporary total enclosure, in  
8 this case if a permanent total enclosure were not  
9 built, and that would be -- the 204 series methods  
10 would be used to prove that.

11                   The measurement of destruction  
12 would entail methods 1 through 4 and method 25(a),  
13 both conducted at three, one-hour runs at the  
14 inlet and the outlet of the control device.

15           Q.       And normally you would give the  
16 prior notification required to the agency?

17           A.       Yeah. There is a 30-day written  
18 notification that's required, and then a five-day  
19 usually phone call verification to give the agency  
20 an opportunity to witness the test.

21           Q.       And who is the person that observes  
22 most of the stack tests currently in this area?

23           A.       Kevin Mattison.

24           Q.       And if needed, Mr. Mattison -- has

1 he been available to waive some of those stack  
2 test notification dates?

3 A. My understanding is he can, yeah.

4 Q. How did the -- how did the informal  
5 stack test that you performed at Packaging differ  
6 from a formal stack test?

7 A. It utilized methods 1, 2, 3, and  
8 25(a) at the inlet and outlet of the control  
9 device. So starting with the destruction portion,  
10 there was no method 4, which is the moisture  
11 method. The moisture method is used to correct  
12 the air flow from wet to dry in standard cubic  
13 feet. It adds a considerable expense, and in this  
14 case we could approximate the moisture very  
15 easily. We approximated 3 percent, which is going  
16 to be very close to the actual, and for the  
17 purposes of an informal test, I didn't deem it  
18 necessary. We did not do three one-hour runs. We  
19 tested for approximately an hour.

20 And again, the nature of the  
21 method -- of method 25(a) is you get a continuous  
22 readout of the concentration of hydrocarbons in  
23 the gas stream. So typically when you are doing  
24 this kind of diagnostic work, using an instrument,

1 you see how consistent your data is. If your data  
2 is very consistent over an hour, you essentially  
3 get a flat-line readout at an operating condition,  
4 as a chemist, as somebody who has been stack  
5 testing for a long time, that's sufficient to show  
6 that that's a representative concentration, rather  
7 than repeating it three times.

8           Those would be the biggest  
9 differences on the destruction side, not doing  
10 method 4 and not doing three, one-hour runs. The  
11 calibrations were the same as would be used in a  
12 formal test. The equipment was the same as would  
13 be used in a formal test.

14           On the capture side, capture  
15 using the temporary total enclosure method is  
16 intrusive, expensive, lengthy, and again, for  
17 purposes of doing some engineering work, we  
18 typically wouldn't do a temporary total enclosure  
19 unless the client was looking for a high degree of  
20 accuracy.

21           What we did was what's referred  
22 to as a liquid-gas mass balance where we determine  
23 the amount of VOM being inputted into the system  
24 by measuring ink use, and more significantly,

1 solvent use and adding the solvent to the  
2 percentage of VOM in the ink.

3 So you get the amount of VOM  
4 that was inputted into the system, and then  
5 estimating the amount that was captured using the  
6 method 25(a) technique at the inlet to the -- in  
7 this case to the recirculating oven. Comparing  
8 those numbers gives you a reasonable estimate of  
9 what the capture is, and for reasons I will go  
10 into if you want, in this case it would be a  
11 reasonably conservative estimate, that the actual  
12 capture would actually be higher.

13 Q. What were the results of your test?

14 A. I would have to look at the document  
15 again. And -- okay.

16 HEARING OFFICER HALLORAN: I'm  
17 sorry. Which document is it?

18 THE WITNESS: I'm sorry. It is  
19 Complainant's Exhibit 8.

20 HEARING OFFICER HALLORAN: Okay.  
21 Thank you.

22 BY THE WITNESS:

23 A. So we found a capture of  
24 82.6 percent, a destruction of 93.6 percent and

1 overall control of 77.3 percent.

2 BY MR. HARSCH:

3 Q. What are the requirements in the  
4 regulation?

5 A. The destruction requirement is at  
6 least 90 percent. I would have to look at the  
7 rule. My memory says the capture is either 60 or  
8 65 percent in the rule.

9 Q. And then the overall would be the  
10 multiple of those two?

11 A. Correct.

12 Q. What was the result of the stack  
13 test results, the informal results? Do you have  
14 an opinion as to whether it demonstrated or did  
15 not demonstrate compliance?

16 A. My opinion is it demonstrated  
17 compliance, absolutely.

18 Q. Did you notify Packaging of that?

19 A. Yes, I did.

20 Q. From that point forward, did you use  
21 those engineering stack test results in all of the  
22 permit applications and correspondence that was  
23 submitted on behalf of Packaging that you  
24 prepared?

1           A.       Yes, I did.

2           Q.       And that would have included the  
3 subsequent annual emissions reports?

4           A.       That is correct.

5           Q.       Would that have included the  
6 application for the ERMS program, et cetera,  
7 that's in the record?

8           A.       The ERMS reports, yes, that is  
9 correct.

10          Q.       And that would have -- would the  
11 ERMS fees that were -- do you know if the agency,  
12 in fact, came back and requested fees by Packaging  
13 for the ERMS program?

14          A.       My understanding is they did, yes.

15          Q.       Would those have been based on your  
16 results of your engineering calculation?

17          A.       Yes, they would.

18          Q.       Do you have an opinion as to whether  
19 or not had a formal stack test been performed on  
20 press 5, that it would have successfully shown  
21 that press 5 complied?

22          A.       Yes, I believe it would have.

23          Q.       How many personal stack tests have  
24 you performed?

1           A.       Hundreds..

2           Q.       And how many of those stack tests  
3 have been observed by agency personnel?

4           A.       Oh, I don't know. I would say  
5 probably -- witnessed tests, maybe one out of  
6 every four is typically witnessed.

7           Q.       And does that include tests  
8 performed in Illinois?

9           A.       Yes.

10          Q.       Who has observed your tests here in  
11 Illinois?

12          A.       When I started, it was -- as a stack  
13 tester, Fred Smith and George Klumera (phonetic)  
14 doing the witnessing, and then probably about  
15 eight years in when I was still stack testing  
16 Kevin Mattison took over and still performs that  
17 duty.

18          Q.       Has the agency ever objected to  
19 any -- the manner in which you performed any stack  
20 tests?

21          A.       Not to my knowledge.

22          Q.       Do you have an estimate of what the  
23 costs would have been to perform a formal stack  
24 testing of press 5?

1           A.       The -- the destruction portion,  
2       depending on who they used at the time would have  
3       been somewhere around 5 to 8,000. The capture  
4       portion would have been anywhere from 15 to  
5       30,000.

6           Q.       And those are set forth in your  
7       later supplemental opinion, correct?

8           A.       Yes.

9           Q.       The cost of the stack test for  
10       construction efficiency for both presses 5 and 6  
11       for the RCO was slightly over \$6,000; is that  
12       correct?

13          A.       That's my understanding, yes.

14          Q.       Have you read the comments that have  
15       been provided on your -- by Mr. Mattison to the  
16       Attorney General's Office?

17          A.       I have.

18          Q.       Do you have a -- do you agree with  
19       those comments?

20          A.       I do not.

21          Q.       And why?

22          A.       Well, I guess I should go one by  
23       one. And I am looking at Complainant's  
24       Exhibit 15.



1           The first comment refers to the  
2 fact that I used a liquid-gas mass balance, and it  
3 does not comply with USEPA Guidance Document 035.  
4 And then it goes on to say that the method lacks  
5 statistical analysis, cannot be verified and is  
6 unreliable.

7           As a chemist and as a stack  
8 tester, I disagree with that statement. I think  
9 an FID is a well-established tool for measuring  
10 hydrocarbons. We know what type of bias the FID  
11 has and what type of errors, positive or negative,  
12 could be introduced in doing them with the gas  
13 mass balance, the magnitude of them, and based on  
14 all of my experience and my professional knowledge  
15 as a scientist, I would say it is sufficient to  
16 absolutely show compliance not in -- not in  
17 accordance with Guidance Document 035, but in  
18 accordance with sound science, and I think it  
19 would also meet the standard of credible evidence  
20 that's established in the Clean Air Act Amendments  
21 of 1990.

22           Q.       And is there another point you don't  
23 agree with?

24           A.       In B Mr. Mattison assumes that

1 the -- states that my listing of the VOM input  
2 rate of 40 pounds an hour is incorrect and further  
3 assumes that that is actually an ink input rate.  
4 That is not correct.

5           The 40 pounds an hour of VOM  
6 that is listed in the report is a -- is an  
7 accurate listing of the amount of VOM going into  
8 the system, not the amount of ink. It was  
9 calculated by measuring the amount of solvent.  
10 And I think it's worth noting that in flexographic  
11 printing you use approximately two pounds of  
12 solvent, which is 100 percent VOM for every pound  
13 of ink, and then adding to it the VOM portion of  
14 the ink that was used. The VOM portion of ink  
15 that was used was determined by looking at the  
16 manufacturer's safety data sheets for the inks,  
17 which has a listing of the VOM content, and that's  
18 how we have arrived at the 40 pounds an hour.

19           In C, Mr. Mattison notes  
20 correctly that the ink usage was measured as VOM  
21 whereas the measured inlet concentration is  
22 measured as propane, and that is correct. And he  
23 also correctly says that because those parameters  
24 are different, the assessment won't be accurate.

1                   And that is correct, however, as  
2 I stated in -- earlier, the assessment will -- we  
3 know that the bias will be on the conservative  
4 side. Which is to say, we will underestimate the  
5 amount of VOM captured. The reasoning that we  
6 could say it's an underestimate requires me to go  
7 through a bit of chemistry. Would you like me to  
8 do that?

9                   Q.       Yes, sir.

10                  A.       When -- a flame ionization detector  
11 you can think of as a carbon counter. It creates  
12 carbon anions, A-N-I-O-N-S, which react, which  
13 cause a deflection in the magnetic field, which is  
14 the detector. That deflection is proportional to  
15 the amount of carbon anions that are created.

16                               When you introduce other --  
17 other atomic species like oxygen or chlorine, that  
18 deflection can be -- can be a little bit  
19 different. It can be different based on the  
20 molecular structure as well. Anything that causes  
21 the deflection from a 1 to 1 to a less than a 1 to  
22 1 is called response factor. Response factors are  
23 somewhat dependant on the type of instrument used,  
24 the specific FID, but we know with pretty good

1 reliability from published response factors how  
2 given compounds will deviate from that 1 to 1  
3 structure.

4 In this case, the type of  
5 compounds that Packaging uses deviate very little  
6 from that 1 to 1 response. The other way in which  
7 this comparison is skewed is that when you assume  
8 everything is propane, you are basing your mass  
9 rate, your -- in pounds that you calculate based  
10 on the molecular weight of propane, and  
11 specifically on the ratio between the carbon  
12 weight to the molecular weight of that compound.

13 In reality, what Packaging uses  
14 are a couple of acetates in significant  
15 quantities, which has oxygen. So their carbon  
16 weight to molecular weight ratio is actually  
17 higher than that of propane. So the weight, if we  
18 had calculated it as acetate, we would have shown  
19 more -- a greater capture number.

20 So when I say we are  
21 underestimating, we are underestimating on two  
22 counts. We are not applying -- we are not taking  
23 the response factor credit, and we are not taking  
24 the molecular weight credit, that both would have

1 put the capture number -- would have made the  
2 capture number higher.

3 Q. Again, that was a measure -- in your  
4 stack test, the capture efficiency was 82 percent?

5 A. Correct.

6 Q. Do you have any other disagreements?

7 A. The -- Mr. Mattison correctly says,  
8 the inlet flow rate is reported over two and a  
9 half times higher than the outlet flow. That is  
10 correct, and that is because the difference  
11 between those flows is what is in the  
12 recirculation loop. We are measuring the inlet,  
13 and the recirculation loop only takes a portion of  
14 the gas flow and allows it to exhaust to  
15 atmosphere. The majority of the gas flow is  
16 actually in the loop as it goes back around to be  
17 recirculated.

18 So there is that difference, but  
19 that's not inconsistent with the recirculating  
20 oven, nor would it make the measurement of  
21 negative pressure incorrect. The pressure was  
22 absolutely negative. I measured it, and the --  
23 empirically, you know the -- you know very well on  
24 a flexographic press if it's out of balance and

1 you have positive pressure because the room will  
2 reek of solvent in moments, and I have never  
3 been -- when press 5 was running, I was never  
4 there when you got a whiff of solvent off of press  
5 5, and so it was absolutely in the negative  
6 pressure.

7 Q. Do you have an opinion as to whether  
8 or not the procedures you used were acceptable  
9 procedures by other stack testers?

10 A. It's very typical of what other --  
11 what I have seen at every stack testing company I  
12 have worked with when you are doing what we  
13 consider diagnostic work, trying to size a control  
14 device or determine an emission factor. It's, you  
15 know, precisely the kind of evidence that -- the  
16 kind of test that had --

17 THE COURT REPORTER: I'm sorry?

18 BY THE WITNESS:

19 A. I'm sorry. It's precisely the kind  
20 of test that had it shown non-compliance, I have  
21 seen, you know, other states use a diagnostic test  
22 as evidence of non-compliance.

23 BY MR. HARSCH:

24 Q. Are you aware of any instance where

1 this type of stack test is -- has been determined  
2 to be non-credible?

3 A. I am not.

4 Q. Would there have been any -- what  
5 would have been the cost of doing a -- a formal  
6 stack test in 1995 versus 2005, for example, or  
7 2004? Would there have been a significant -- any  
8 savings, the costs go down?

9 A. The difference over those ten years  
10 might be -- I would guess maybe \$1,000.

11 Q. And would the same apply to  
12 constructing a temporary total enclosure?

13 A. Yeah. I would say it would be the  
14 same.

15 Q. Are your estimates actually on your  
16 experience having done tests over that time  
17 period?

18 A. Yes.

19 Q. Did you form an opinion and express  
20 it as to the ability of press 5 to handle the  
21 production of press 4 going back to the initiation  
22 of the rule?

23 A. I did.

24 Q. Would you explain that opinion and

1 what it's based on?

2 A. Well, it's based on data that was  
3 provided to me by Packaging on VOM usage and gross  
4 sales, and that's, you know, again, comparing 2002  
5 to 2003, and seeing that in 2003 when press 5 was  
6 operating, the VOM usage was -- was significantly  
7 higher and gross sales were significantly higher,  
8 which both to me seemed to be indicators that  
9 press 5 could have handled all of press 4.

10 I think empirically, too, you  
11 know, from the times that I would be at the  
12 facility, when 5 was operating at -- you know,  
13 it's -- it never was operating all the time.  
14 Every time I did a site visit there would be -- it  
15 might be down for setup. It might be down for  
16 maintenance. It might be running. It might be  
17 waiting for a job. So empirically, you know, just  
18 my observations of the operation were in line with  
19 what the data seemed to suggest.

20 Q. Packaging maintained records  
21 throughout this time period on VOM purchases?

22 A. Which time period are you referring?

23 Q. 1995 forward.

24 A. Yes. My understanding is they did,



1 yes.

2 Q. And those are the records that you  
3 have looked at even recently and still exist?

4 A. Yes.

5 MR. GRANT: I am going to object to  
6 the use of this testimony. I'm sorry. We were  
7 advised in responses to interrogatories they had  
8 absolutely no records during this period. If they  
9 are going to use this now --

10 HEARING OFFICER HALLORAN: I'm  
11 sorry, but you are going to need to speak up.

12 MR. GRANT: We were -- in responses  
13 to interrogatories, Packaging advised us they had  
14 absolutely no records related to hours of  
15 operation or production or anything for this  
16 period. So if he is going to use this evidence,  
17 we think it should be excluded.

18 MR. HARSCH: Mr. Grant, I have made  
19 available to you the actual purchase records for  
20 this time period.

21 MR. GRANT: Well, you showed me some  
22 invoices for purchases of ink and solvent.

23 MR. HARSCH: That's what I am  
24 talking about.

1 MR. GRANT: I withdraw my objection.  
2 I withdraw my objection for the time being.

3 MR. HARSCH: At this point in time,  
4 I have no further direct questions.

5 HEARING OFFICER HALLORAN: Thank  
6 you. Whose witness? Mr. Grant?

7 CROSS-EXAMINATION

8 BY MR. GRANT:

9 Q. Hi, Mr. Trzuppek. I wanted to  
10 discuss general -- your general involvement with  
11 Packaging Personified. It's my understanding you  
12 came to them in 2001?

13 A. That's correct.

14 Q. Do you have any personal knowledge  
15 of their operations from 1995 until the time that  
16 you came? The summer of 2001 I think is the date  
17 that's in the record.

18 A. I'm not sure what you mean by  
19 personal knowledge of their operations.

20 Q. I just wanted to get a feeling for  
21 did you know that Packaging Personified was  
22 operating?

23 A. I did.

24 Q. Okay. And did you have any personal

1 knowledge of the hours of operation of presses 5  
2 and 6 from March 15th, 1995, until December of  
3 2001 when you came there?

4 A. I had no direct knowledge of that,  
5 no.

6 Q. Okay. All your knowledge about the  
7 utilization of these two presses during that  
8 period came from Packaging, didn't it?

9 A. With the exception of, you know, my  
10 observation of the ink records, which would be my  
11 own, my knowledge of the utilization would have  
12 come from Packaging.

13 Q. Now, the ink records that you are  
14 talking about, those are copies of invoices from  
15 ink manufacturers and copies of invoices from  
16 solvent -- from vendors of solvents, solvent  
17 distributors, that sort of thing?

18 A. That's correct.

19 Q. Was there anything else? Was there  
20 any tabulation, any calculation of hours, any  
21 records of the hours of operation of press 5 or  
22 press 4 during this period?

23 A. From Packaging, you mean?

24 Q. Yeah. Something besides the

1 invoices for the -- you know, from manufacturers  
2 and solvent vendors, was there anything else?

3 A. No. I don't believe there's any  
4 tabulation.

5 Q. And you don't have any -- well, I  
6 shouldn't ask this as a leading -- do you have any  
7 knowledge of their sales during the period from  
8 March 15th, 1995 to December of 2001?

9 A. I was provided sales data, yes.

10 Q. And when was that provided?

11 A. That, I can't tell you when that was  
12 provided. It would have -- because it was into  
13 this document. It would have been sometime before  
14 I prepared this supplemental report.

15 Q. Okay. So in -- let's see. What was  
16 your exhibit number?

17 A. I think it's 62.

18 Q. I am going to use -- rather than use  
19 two, they are identical; so 62.

20 So let's see. On page 4 of 4,  
21 of 62, for that purpose?

22 A. Correct.

23 Q. Okay. And that -- was that -- would  
24 that have been within the last 12 months?

1           A.       Well, I think it would have to be  
2 before that. Well, yeah, probably.

3           Q.       I mean, when you --

4           A.       Yeah.

5           Q.       When you got it?

6           A.       Roughly, yeah.

7           Q.       All right. Okay. How about the --  
8 how about the knowledge of their financial  
9 results, and I am not about to open up that  
10 confidential docket again at this point.

11                       But you were sitting here when  
12 all that stuff was coming in, right? Prior to  
13 that, prior to today, did you have any knowledge  
14 of the profitability or the profits, gross  
15 profits, any of those numbers?

16           A.       No, sir.

17           Q.       Okay. And other things I was  
18 thinking of was knowledge of lead times for  
19 Packaging customers. Do you have -- did you have  
20 any understanding of that?

21           A.       Well, for that industry in general,  
22 my impression has always been it's a rather quick  
23 turnaround, a quick turnaround market, but I don't  
24 know the actual lead times.

1           Q.       The reason I am saying this is, as  
2 you know, I mean, they did operate with presses 4  
3 and 5 until one year in 2003 where, for whatever  
4 reason, you know, they were compelled to shut it  
5 down or chose to shut it down when they were  
6 operating with two. One of the things that  
7 operating with two presses is -- and Ms. Sangha  
8 got into it is your ability to handle rush orders  
9 and to handle the flexibility in production.

10                               Do you have -- what was your  
11 level of knowledge for that period of 1995 to  
12 2001?

13           A.       I wouldn't have any level of  
14 knowledge.

15           Q.       Okay. When did you advise Packaging  
16 that they were -- that press 4 was noncompliant?

17           A.       When I looked at their ink and  
18 solvent use records.

19           Q.       Okay. Would it have been -- and off  
20 the top of my head, I am thinking it was  
21 December 9th, and it may not have been. Oh, yes,  
22 the day you did the stack test -- we have got a  
23 date there. Okay. December 12th, 2001.

24           A.       It would have been before that.

1 Q. Okay. You would have advised them  
2 that press 4 was not in compliance before that  
3 date?

4 A. Yes.

5 Q. Okay. Okay. Let's go to Exhibit  
6 No. 12. That's Complainant's Exhibit No. 12.

7 A. I have it.

8 Q. Okay. If you can -- let's see. If  
9 you could go to -- okay. Respondent's Exhibit 12.

10 A. Respondent's exhibit --

11 Q. Sorry.

12 A. That's okay.

13 Q. Okay. All right. Look at the table  
14 that's on -- I think it's page 4 of this exhibit.

15 A. Yes, I have it.

16 Q. Did you produce this table?

17 A. You know what? That's a very good  
18 question. I think I did, but it's long enough  
19 that I can't say that with certainty. It looks  
20 like the way I would have done an Excel table at  
21 that time.

22 Q. Okay. And, you know, what we had  
23 discussed before with them was the utilization of  
24 press 4 and press 5 that's reported here. You see

1 that in the production of feet we are using on it.  
2 I mean, based on these numbers, during 2002 press  
3 number 4 was a major part of their solvent  
4 printing production. Would you agree with that?

5 A. If this production represents  
6 solvent printing, yeah, I would agree with that.

7 Q. Well, presses 4 and 5 are the  
8 solvent printing, right?

9 A. Presses 4 and 5 both do solvent  
10 printing. I -- press 4, again, at some point was  
11 also used for rewind, and I don't know when that  
12 was.

13 Q. Okay. Just one second.

14 Mr. Hearing Officer, I have what  
15 has been marked as Complainant's Exhibit 22, if I  
16 may approach?

17 Can you identify this document?

18 A. This appears to be an annual  
19 emission report for the year -- reporting year of  
20 2002.

21 Q. Okay. And your name is at the  
22 bottom. Did you prepare this report?

23 A. I believe I did.

24 Q. Can you turn to the section -- I



1 will find it if I can -- the section that reports  
2 VOM emissions for press number 4?

3 A. That would be page 6 of the --  
4 actually, page 7 is where the emissions are, yeah.

5 Q. All right. As far as pages 6 and 7,  
6 the emission rate, does this exhibit indicate that  
7 press number 4 was actually running and doing  
8 solvent during 2002?

9 A. It does.

10 Q. And just real quickly to tie it up,  
11 do you have Complainant's 21, the annual emission  
12 report for the previous one?

13 And if you look at Complainant's  
14 Exhibit 21, which is in evidence -- do you have a  
15 copy of it? That's a 2004 annual emission report.

16 MR. HARSCH: I think it's loose.

17 BY THE WITNESS:

18 A. Oh, yeah, okay. I have it. I have  
19 it, yep.

20 BY MR. GRANT:

21 Q. And if you can again turn to press  
22 number 4 emissions.

23 A. Yes.

24 Q. And it doesn't list any emissions,

1 does it?

2 A. That is correct.

3 Q. Does that suggest that press number  
4 4 was used as a printer in 2002, but was maybe a  
5 rewinder or something in 2003?

6 A. My -- I mean, it definitely did not  
7 operate in 2003. And 2004 -- or I'm sorry --  
8 2002, yeah, it definitely did some printing.

9 Q. Okay.

10 A. If I can expand on that?

11 Q. Sure.

12 A. And on page 6, if you look at the  
13 column then --

14 Q. Which one?

15 A. Page 6 in the 2002.

16 Q. Okay.

17 A. PWR is the process weight rate, and  
18 you will see the pounds per hour, which would be  
19 the amount of ink consumed for 4 was deemed to  
20 average 14.99. If you look at page 8, the PWR for  
21 press 5 was 34.97. So that's probably the best  
22 indicator of the relative utilization of those  
23 presses that year.

24 HEARING OFFICER HALLORAN:

1 Mr. Trzupek, is that Complainant's Exhibit 23 or  
2 21?

3 MR. GRANT: He is looking at 22.

4 HEARING OFFICER HALLORAN: Thank  
5 you.

6 BY MR. GRANT:

7 Q. And where did you get the  
8 information for this pounds per hour calculation?

9 A. That would have come from Packaging.

10 Q. Okay. Mr. Trzupek, I was going to  
11 ask you some questions about the CAAPP permit  
12 application, but Ms. Sangha advised or did a lot  
13 of that with Joe and Mr. Harsch has done some on  
14 the CAAPP permit application as it is.

15 I just want to ask you, did you  
16 hear Mr. Imburgia's testimony?

17 A. I did.

18 Q. And do you agree with it? Part?

19 All right. Well, let me see if  
20 I can do this without the document. You mentioned  
21 that a manufacturer's guarantee is a term of  
22 art -- this is my interpretation of it, a term of  
23 art that's used in what is meant to communicate as  
24 based on your best knowledge or something like

1 that; is that --

2 A. That's the way we usually do it in a  
3 permit application, yeah.

4 Q. And I don't know if you remember,  
5 but for some reason I do, that in the 2009 hearing  
6 that David Bloomberg testified that a  
7 manufacturer's guarantee is not acceptable as a  
8 compliance demonstration. Do you remember that?

9 A. I don't remember that, but I could  
10 well imagine David saying that.

11 Q. Yeah. It's in the record.

12 Is that the position of the  
13 agency, that they won't accept the manufacturer's  
14 guarantee?

15 A. I don't know.

16 Q. Okay. Do you know why -- well, if  
17 you don't know, then you wouldn't know why you put  
18 it in when the agency wouldn't accept it. Is that  
19 a fair statement?

20 A. I guess because I have had other  
21 permit applications that I have put that language  
22 in and then they have been accepted, I wouldn't --  
23 I didn't hesitate to use it again.

24 Q. Okay. Do you recall which

1 application it was where the agency accepted a  
2 manufacturer's guarantee?

3 A. Wow. I am sure I could produce one  
4 or two or three or a dozen, but to give you a  
5 specific one -- specific one right now, I -- no.  
6 I --

7 Q. I am thinking big versus small. In  
8 other words, a flexographic printer is a big VOM  
9 emitter, and maybe a smaller one is acceptable.  
10 Is -- does that suggest anything or --

11 A. Well, yeah, I mean and -- yeah, it's  
12 all relative. I think of Packaging as small and I  
13 --

14 Q. The operation of a business, you  
15 know, a printing press using solvent inks as  
16 opposed to -- you know, I don't know. I am  
17 thinking of a minor emission point as a refinery  
18 or something like that?

19 A. I think it's some of that. I think  
20 it's some of how -- you know, how significant the  
21 source is and how -- how many times we have seen  
22 it before and how much we can rely on it. You  
23 know, for something like a paint filter, for  
24 example, it would be common for a coater to use a

1 paint filter, and it would be common for, you  
2 know, me to say that that paint filter is  
3 guaranteed to be 99 percent effective,  
4 manufacturer's guarantee, in removing solids, and  
5 that's what we would list, and, you know, I don't  
6 think I've ever done a paint booth where that's  
7 not been okay. So stuff like that.

8 Q. Okay. We are going to have to go to  
9 Exhibit 9, Complainant's Exhibit 9, this CAAPP  
10 permit.

11 A. Okay. Got it.

12 Q. Okay. Now, there was a lot of  
13 information in this application that was provided  
14 to you by Packaging I'm sure. You wouldn't have  
15 to audit all the records personally to perform a  
16 CAAPP application, would you?

17 A. No.

18 Q. And I believe in your deposition one  
19 of the things you relied upon was the  
20 manufacturer's guarantee portion that the VOM  
21 control portion was provided to you by Packaging;  
22 is that correct?

23 A. Yeah. As far as that there was the  
24 existence of a recirculating oven that would

1 destroy VOCs.

2 Q. Okay. Can you turn to IEPA 0364  
3 Bates stamp?

4 MR. HARSCH: I'm sorry. What's the  
5 number?

6 BY MR. GRANT:

7 Q. 0364 in Exhibit 9.

8 A. Okay. Got it.

9 Q. Okay. The internal thermal oxidizer  
10 identified in there, Mr. Imburgia said that was  
11 the recirculating dryer, correct?

12 A. Yes.

13 Q. And you agree that's what that  
14 refers to?

15 A. Yes.

16 Q. Aside from that, there was no  
17 internal thermal oxidizer in there?

18 A. You mean like an additional?

19 Q. Yeah.

20 A. No. There was not an additional,  
21 no.

22 Q. If you can turn to 03 -- 3067 -- or  
23 0367. Okay. I want to ask about -- specifically  
24 about the 90 percent figure in there and where

1 that number came from, because that's pretty  
2 specific. Was that provided to you by Packaging,  
3 or was it -- how was it determined?

4 A. It depends on the date.

5 Q. This one is June 9th of 2002.

6 A. And when did we perform the test?

7 Q. December 12th, 2011 (sic).

8 A. Okay. So typically when we are  
9 doing a -- when we are doing the application,  
10 unless there is some other reason, we claim the  
11 destruction rate that the rule provides. So  
12 90 percent is what the rule provided. We had done  
13 the test that showed we were over 90. So that's  
14 why we would have listed 90.

15 Q. So that is in there from your 2001  
16 test from the --

17 A. A combination of the test and the  
18 rule, and the rule requirements, yeah.

19 Q. Is Mr. Imburgia -- I am talking  
20 about Joe Imburgia. Is he qualified to do stack  
21 testing himself?

22 A. Not to my knowledge.

23 Q. Okay. And are you aware of any  
24 tests that he might have performed on his own



1 outside of your informal stack test?

2 A. I am not.

3 Q. All right. Let's turn to Exhibit 8.  
4 It's the report on your informal stack test.

5 A. Okay.

6 Q. And some of this maybe I got from  
7 Mr. Harsch, but I didn't look yet. The VOM input  
8 is listed -- I am on page 2 -- at 40 pounds per  
9 hour?

10 A. Yes.

11 Q. And how did you come up with that 40  
12 number?

13 A. We measured the amount of solvent  
14 used directly. We weighed it. We weighed the  
15 amount of ink used, and then we took the VOM  
16 percentage of the ink and added it to the weight  
17 of the solvent used.

18 Q. So if it was like 70 percent  
19 solvent, then it would be -- the amount of -- the  
20 VOM input number in there would have been eight  
21 times 7.7 equals 40 pounds; is that correct?

22 A. No. In flexographic printing,  
23 again, you use -- you have solvent that you use  
24 for viscosity adjustment, depending on the

1 conditions of the day, and you use about two  
2 pounds of straight solvent for every pound of ink  
3 roughly. So this 40 pounds, two-thirds of that  
4 number would have been -- what's two-thirds of 40?

5 Q. You don't have to do the math if --

6 A. So say there is -- so 30 pounds of  
7 this is -- roughly is going to be straight  
8 solvent --

9 Q. Right.

10 A. -- weight, 30 pounds. There is 30  
11 pounds of VOM input, and then you have maybe  
12 20 pounds of ink that's 50 percent VOM. So that's  
13 another 10.

14 Q. Okay. So this is the VOM content?

15 A. Total.

16 Q. Not -- okay.

17 A. Correct.

18 Q. You agree that the test did not  
19 fully meet the requirements of 218.401, don't you?

20 A. I do. I do.

21 Q. And to perform the test you needed  
22 to find an inlet and outlet point to measure?

23 A. That is correct.

24 Q. And that wasn't chosen by you, but

1 rather Packaging showed you an appropriate place?

2 A. Correct. One of their -- as I  
3 recall, it was one of their maintenance people who  
4 pointed me to the ducts, the inlet and the outlet  
5 ducts.

6 Q. Okay. This is sort of going over  
7 the same ground. As far as the fact that the  
8 recirculating oven on press 5 operated, say, from  
9 March 15th, 1995, to the present, that came  
10 directly from Packaging, right?

11 A. That's correct, yes.

12 Q. You were talking about these  
13 recirculating oven flexographic printers. I  
14 guess, first of all, I will ask -- I mean,  
15 flexographic printers all have a drying system of  
16 some sort, don't they?

17 A. In general. There are exceptions,  
18 but, yeah, in general they do.

19 Q. And I think before the purpose was  
20 so that you are running at a speed where you are  
21 not worried about smearing the inks, right?

22 A. That is correct.

23 Q. Is that what it's for? And also, I  
24 think you were here when Mr. Imburgia testified to

1 the drying system on press number 6. I think he  
2 said there was a recirculating drying system, not  
3 necessarily exactly the same as 5. That was my  
4 impression of it. Do you have knowledge of press  
5 6's system?

6 A. I don't have personal knowledge. My  
7 understanding from talking to Mr. Imburgia is that  
8 it recirculates hot air, but it doesn't use it as  
9 combustion air, whereas in 5, it used the  
10 recirculated air as combustion air.

11 Q. Okay. One of the issues in this  
12 case is that Packaging is claiming it didn't need  
13 to install an RTO for press number 5. But, in  
14 fact, did install a press -- an RTO for press  
15 number 5, correct?

16 A. It installed it. I think actually  
17 with -- the impetus was the installation of press  
18 number 6.

19 Q. That was when it was installed, and  
20 it was kind of my understanding to that period,  
21 but if press number 5 had a system that could  
22 control and press number 6 had a recirculating  
23 oven, what was the purpose of the RTO?

24 A. To control press -- I mean,

1 primarily to control press number 6, because,  
2 again, my understanding of 6 is that it  
3 recirculates warm air, but it doesn't use it as  
4 combustion air. If it's not using it as  
5 combustion air, it's not going to get into the  
6 flame front and it's not going to be destroyed.  
7 So 6 has to have an RTO.

8 Q. Okay. That's based on his testimony  
9 today you are saying? Because you said you had no  
10 personal knowledge of press 6.

11 A. I don't. And this is just from  
12 previous discussions with Joe and the guys at  
13 Packaging.

14 Q. Okay. Which then leads to the  
15 question of Packaging did, in fact, go and buy a  
16 \$250,000 RTO and has been running and feeding gas  
17 into it, all that kind of stuff. Why would it  
18 have bought an RTO for three presses when they  
19 only have two and they have one --

20 MR. HARSCH: I'd object to the  
21 question. He had ample opportunity to ask that  
22 question to Packaging when they were on the stand.

23 HEARING OFFICER HALLORAN:  
24 Overruled. He may answer if he is able.

1 BY MR. HARSCH:

2 Q. Why would Packaging have bought the  
3 RTO sized for three presses when you only had two,  
4 and the one press did not need to be controlled?

5 A. Well, I -- buying it for three  
6 presses, I would imagine, would be for in case  
7 they expanded, and like any business, they want to  
8 be ready for expansion, I suppose, but again,  
9 that's just my speculation.

10 I would not think that they  
11 would want to run one press controlled by the  
12 oxidizer and another press with a different  
13 control system. I would think that they would  
14 have done it for simplicity to duct them both to  
15 the oxidizer they were buying anyway. The  
16 operating press wouldn't be any different.

17 Q. Well, wouldn't the gas cost be  
18 higher for a larger RTO?

19 A. No. I mean, with the gas -- kind of  
20 gas stream you have in flexo, it's pretty much  
21 they run self-sustained anyway. I mean, once the  
22 oxidizer is up to temp, you are pretty much just  
23 running the gas on pilot and the solvent is  
24 providing all the heat you need to run it.

1           Q.       The technical information provided  
2 for the presses and the permit applications has a  
3 BTU per hour rating?

4           A.       It does.

5           Q.       Okay.

6           A.       That is the rating.

7           Q.       Are you saying it's not using it?

8           A.       Correct.

9           Q.       Okay. In your opinion report -- let  
10 me get it out. If you look under number 2 -- and  
11 this is Respondent's Exhibit 62, and State's  
12 Exhibit 20 or 19 -- strike that.

13                    In the middle of the second  
14 paragraph there is a sentence that I am familiar  
15 with both flexographic presses in general, and  
16 flexos that are equipped with recirculating ovens  
17 in particular, and have been at several printing  
18 facilities equipped with one or the other or both.  
19 Do you see that?

20          A.       I do.

21          Q.       Okay. So which facilities have you  
22 been to that have these ovens?

23          A.       I don't know what they are calling  
24 themselves these days, but there are several what

1 used to be treasure chest advertising, and I just  
2 don't remember what they are called these days,  
3 but they are a big nationwide printer, and they  
4 have several of them. QuadGraphics had some. I  
5 have seen some at RR Donnelley's facilities.

6 Q. The -- the printers -- and this  
7 was -- there was a lot of this in the 2009 hearing  
8 that you -- where you did the adjustment standard  
9 petition for Bema -- Bema Systems and Vonco or --

10 A. Very good. You win the cigar, yep.

11 Q. Really?

12 A. That's it.

13 Q. I'm amazed I remember that.

14 How about for those places?

15 A. Vonco, no. Bema, no. I don't know  
16 about Formel.

17 Q. Okay. Let's go to your report, page  
18 3. It's actually page 3 of 4 at the bottom. At  
19 the bottom of -- this is subsection 2. It's on  
20 page 3. You mention Method 85 (sic), 2s and 25(a)  
21 as a determination of capture efficiency and you  
22 state, these tests have routinely been accepted by  
23 state and federal authorities, including the  
24 Illinois Environmental Protection Agency. That's



1 correct?

2 A. Yeah. Except there is a typo there  
3 that I had not noticed before. It should be 18,  
4 25 and 25(a).

5 Q. Because that didn't look right to me  
6 either.

7 MR. HARSCH: Excuse me. I didn't  
8 catch the typo correction.

9 MR. GRANT: Do you see the second  
10 paragraph -- or the third paragraph on page 3 of  
11 4? 2S becomes 25.

12 MR. HARSCH: Mr. Hearing Officer,  
13 would you please -- if we could mark the  
14 correction on it?

15 HEARING OFFICER HALLORAN: Mine is  
16 marked.

17 BY MR. GRANT:

18 Q. All right. Now, which of these  
19 methods did you use in the informal stack test?

20 A. 25(a).

21 Q. Okay. Is 25(a) the one that had the  
22 three hours?

23 A. Three, one-hour runs, correct.

24 Q. But you didn't do three. You did

1 one. You said 25(a) was not done in its entirety,  
2 correct?

3 A. Yeah. It was not a -- it was not a  
4 formal test. It was not done.

5 Q. Okay. When you say these tests have  
6 been -- routinely been accepted by State and  
7 federal authorities and now let's get into -- kind  
8 of more into your informal stack test, when has --  
9 because without going into a lot of details, there  
10 were -- like Methods 1 through 4 you didn't do 4.  
11 You didn't do the three-hour test.

12 When has Illinois EPA accepted  
13 that sort of partial test?

14 A. In enforcement situations.

15 Q. And what I am looking for -- because  
16 this is what your opinion is -- is to demonstrate  
17 compliance with the rule, because that's what the  
18 issue before us is, right, could it have met  
19 218.401 control efficiencies?

20 For the purpose of demonstrating  
21 compliance, not gaining an estimate over what may  
22 need to be done in the future or for sizing for  
23 control or anything like that, when has Illinois  
24 EPA ever accepted a partial compliance test to

1 demonstrate compliance with the rule?

2 A. I don't know if they have or have  
3 not.

4 Q. Is this the first time?

5 A. The first time what?

6 Q. Is this the first time that you have  
7 ever attempted to prove compliance with a rule  
8 without following the procedure? And I am talking  
9 about VOM emissions. We might as well stay there.

10 A. I guess I would have a little  
11 trouble with the structure of the question,  
12 because what I was attempting to do was to  
13 determine whether that could have met the capture  
14 and destruction requirements. And it absolutely  
15 did.

16 It wasn't a formal stack test.  
17 We have admitted that. As a scientist can I say  
18 with certainty, with technical certainty, that  
19 that met more than 90 percent destruction and more  
20 than 65 percent capture? I can. I understand  
21 that it's not formal, and I understand that EPA  
22 would want a formal compliance test to demonstrate  
23 compliance, but did that unit meet the numbers?  
24 Yes, it did.

1           Q.       All right. The reason that Illinois  
2 EPA would want a formal stack test is because  
3 that's the minimum reliable test, isn't it?

4           A.       I think -- I don't believe that  
5 that -- I don't think I would agree with that  
6 statement. I don't think it's the minimum  
7 allowable.

8           Q.       Do you think it's overkill?

9           A.       I think it can be, yeah.

10          Q.       Do you think it's overkill in this  
11 case? And I'm not talking about the whole case.  
12 I am talking about not accepting your informal  
13 stack test as a -- to demonstrate VOM capture and  
14 control.

15          A.       I don't know that I would use the  
16 word "overkill," but I think that if you are  
17 interested to know what the actual capture and  
18 control numbers are, it's not necessary to do  
19 three, one-hours.

20          Q.       Do you think the rule is not  
21 technically sound?

22          A.       No. No. I would not agree with  
23 that. I think the rule is technically sound.

24          Q.       Would you agree that using the

1 method that you used to demonstrate compliance  
2 with the rule, in this case the informal stack  
3 test, is a novel method?

4 A. I think -- novel for demonstrating  
5 compliance is what you mean?

6 Q. Yeah. I understand that -- you  
7 know, there's a reason for you doing what you are  
8 doing, but as a method of demonstrating this  
9 compliance with 218.401, is this a novel method?

10 A. Well -- and again, it wasn't  
11 intended to be a compliance test. So we are using  
12 it as evidence after the fact to determine whether  
13 the press was compliant, I don't think that's  
14 novel. Using it as -- calling a non-compliance  
15 test a compliance test, yeah, that would be novel.

16 Q. So it's not generally accepted to  
17 use a partial test to demonstrate compliance with  
18 the rules?

19 A. Yeah. No. I would agree with that.

20 Q. Okay. And if it had been -- I think  
21 that we have gone through this, but if it had been  
22 a formal test, you would have notified Illinois  
23 EPA prior to come up with an agreed protocol and  
24 allowed them to witness the test; isn't that

1 correct?

2 A. That is all correct.

3 Q. And they weren't notified, because  
4 it wasn't intended to be a compliance test?

5 A. That is correct.

6 Q. Okay. We have got a little bit of a  
7 disconnect here between your numbers and  
8 Mr. McClure's on the PTE, or not necessarily the  
9 costs of the PTE -- I mean, well, there is two  
10 that I recall. For one thing, he put an estimate  
11 at \$5,000 in for a permanent total enclosure and  
12 then 6,000 something for the compliance test  
13 itself; whereas, your testimony is 15 to \$30,000  
14 for a temporary total enclosure, and then we are  
15 also accepting that 6,000 number, correct? Could  
16 you explain that?

17 A. So really the difference between  
18 Mr. McClure's number for the PTE and my number for  
19 the TTE?

20 Q. Yes.

21 A. Yeah. The -- if you are doing a  
22 permanent total enclosure, the test is really a  
23 certification of what used to be called procedure  
24 T and Kevin can tell you, it's not -- it's a 204

1 now, I believe, but it's a series of measurements  
2 that you do one time, measuring the surface area  
3 of the room, measuring the diameter of any outlets  
4 into or out of the room, and it's a pretty quick  
5 procedure that is not very expensive.

6           If you are doing a temporary  
7 total enclosure, you actually have to construct  
8 the enclosure. A lot of them are made out of  
9 two-by-fours and visqueen.

10           So you are building the  
11 structure around whatever you are wanting to  
12 measure the capture efficiency of, or you are  
13 configuring the room in order to do that. And  
14 then you are doing three -- I'm sorry.

15           First, you do a baseline run to  
16 establish normal conditions. Then, you would do  
17 what's called a balancing run to verify that the  
18 TTE isn't influencing the test, and then you do  
19 three, three-hour tests. So a TTE test is usually  
20 a two-day ordeal, and that 15 to 30 includes the  
21 construction costs of the TTE and then the fact  
22 that you are doing basically two days of  
23 continuous testing in order to finish it.  
24 Whereas, a PTE is just a one-time certification.

1 Q. So installing a permanent total  
2 enclosure actually is cheaper then?

3 A. Well, no. I didn't say that.  
4 That's the certification. I -- constructing the  
5 permanent total enclosure, actually building, you  
6 know, the walls or whatever is necessary, I don't  
7 know what those costs are. They -- they had some  
8 cost to do that when Packaging did it, but I have  
9 no clue what those costs are.

10 Q. So you don't really know, but you  
11 accept the fact that he has put the \$5,000 number  
12 in his estimate?

13 A. Yes. I have no personal knowledge.

14 Q. Okay. Were you there when they --  
15 were you present at Packaging when they ran the  
16 formal stack test on the control device in 2004?

17 A. I was.

18 Q. Were you involved in setting that  
19 up?

20 A. I helped them put together the  
21 request for proposal and pick a vender, yes.

22 Q. Did they have the permanent total  
23 enclosure in place at that time?

24 A. They did.



1 Q. And press -- at the time press 5 and  
2 press 6 were connected to the RTO, correct?

3 A. That is correct.

4 Q. But the stack test was run on the  
5 RTO itself, correct?

6 A. At the inlet and the outlet of the  
7 RTO.

8 Q. Right. And wouldn't it have been an  
9 easy -- comparatively easy thing to stack test  
10 press number 5 at that point using a formal  
11 compliance test?

12 A. My understanding -- and again, I  
13 don't have direct knowledge of this, but my  
14 understanding at that point was that 5 had been  
15 reconfigured so that it was no longer -- the  
16 ducting was no longer recirculating.

17 Q. Couldn't you just go create an inlet  
18 or an outlet, whatever you had to do, before it  
19 reached the control device and do the testing?

20 A. Well, if -- but it wouldn't have  
21 shown any control if they had disconnected the  
22 recirculating ductwork.

23 Q. Okay. So this was a situation that  
24 was created by Packaging taking the drying oven

1 off, I assume?

2 A. Not the drying oven off. It's the  
3 recirculation loop.

4 Q. Okay.

5 A. Yeah.

6 Q. Did you -- well, let's take a look  
7 at it real quick. Can you look at 16? It's a  
8 picture of the press.

9 A. Complainant's 16. Okay. Got it.

10 Q. Now, this is in evidence. And this  
11 is -- they are trying to sell the printer, the  
12 press number 5, and this is the advertising  
13 information that they have on it.

14 A. Yes.

15 Q. And you see they have listed here  
16 the recirculating drying oven as one of the  
17 features of it?

18 A. I did.

19 Q. Okay. Is there any reason why --  
20 and this is one thing -- and I asked Mr. Imburgia  
21 about this, too, but is there any reason why since  
22 2001 nobody has every just done a formal stack  
23 test on number 5? I mean, I understand what's  
24 your testimony about once it was removed, et

1 cetera, but what would prevent them from doing it  
2 right now, or a week ago, even better? I'd look  
3 like an idiot.

4 MR. HARSCH: You would object to  
5 putting the evidence in.

6 HEARING OFFICER HALLORAN: I'm  
7 sorry?

8 MR. HARSCH: He would object to  
9 putting the evidence in.

10 BY MR. GRANT:

11 Q. I don't think I could keep that out.  
12 All right. Do you understand what I'm saying?

13 A. Yeah, I do understand what you are  
14 saying, and I understand where you are coming  
15 from. In my world, the idea of volunteering to do  
16 a formal test stack without being requested by the  
17 State, I don't know anybody in my side of the  
18 aisle who would ever suggest that.

19 Q. I mean, you were here -- well, prior  
20 to today, did you get the confidential financial  
21 information which I'm not going to use -- but were  
22 you exposed to that?

23 A. No.

24 Q. I mean, as Mr. Imburgia admitted,

1 there really was -- there is no financial  
2 limitation on performing the test really  
3 throughout the relevant period?

4 A. No, but -- and I understand that.  
5 But it's not -- my job as a consultant is not to  
6 tell Mr. Imburgia how to -- you know, hey, here is  
7 another way you can spend some money. And why  
8 don't you have the cop ride with you on the way  
9 home, too, so he can make sure you're not  
10 speeding. I wouldn't do that.

11 Q. There was a lot of -- in  
12 Mr. Imburgia's testimony it was -- got to a point  
13 where he was basically saying, we took the best  
14 advice we could or words to that effect. Do you  
15 recall?

16 A. Yes.

17 Q. Did you advise them not to do a  
18 formal test on press number 5?

19 A. I didn't proactively say, don't do  
20 it, but I didn't suggest it, and I won't suggest  
21 it.

22 Q. Okay. That resulted in what we have  
23 right here right now, hasn't it?

24 A. Well, it's -- I think that would --

1 that's one perspective. Another perspective is  
2 that we developed very credible evidence that the  
3 press was, in fact, in compliance. So in  
4 assessing the penalty, why don't we use that  
5 credible evidence.

6 Q. The Board has already found  
7 violation for it. In other words, they have split  
8 the baby here and they said, press 5 was in  
9 violation because you didn't demonstrate  
10 compliance. That's a violation, but let's send  
11 these guys back to hearing on the issue of whether  
12 it could have complied, ignoring press 4's  
13 operation and the benefit. You know what was the  
14 bonus for that? That's kind of what we are -- I  
15 mean, do you agree that kind's of why -- we're  
16 here for that?

17 A. Yeah.

18 Q. It would have eliminated that whole  
19 issue.

20 A. And I understand that. And, you  
21 know, if I had back in 2002 a magic ball that  
22 would have made me do something that would have --  
23 that would have said, this is the one thing we can  
24 do that would fix this and none of the rest ten

1 years would happen, yeah, I would do that.

2 But I guarantee you, Mr. Grant,  
3 if I told somebody in my business that I had told  
4 a client to voluntarily do a formal stack test,  
5 they would think I was nuts.

6 Q. Okay. We are getting into the  
7 uncomfortable area of this examination, and I'd  
8 ask you to turn to Complainant's No. 18.

9 A. Okay.

10 HEARING OFFICER HALLORAN: All  
11 right. This is regarding the motion in limine?

12 MR. GRANT: Yes.

13 HEARING OFFICER HALLORAN: I really  
14 haven't ruled on that, because I left it go.  
15 Because based on our conversation, Mr. Harsch was  
16 going to whittle his down from 100 or so to four,  
17 I think he submitted regarding the congressional  
18 discussions of Mr. Trzupek?

19 MR. HARSCH: Well, I was hoping  
20 against all hope Mr. Grant would not proceed. So  
21 I have not marked my documents. I have, as I  
22 explained on our status call, the list of  
23 documents I intend to move into this and offer,  
24 the list of documents that were attached to my

1 motion in limine and the documents from the two  
2 times that Mr. Trzupsek has testified before  
3 Congress, and Mr. Grant, as of this morning, had  
4 agreed to that.

5 MR. GRANT: Yeah, I have no  
6 objection to that.

7 MR. HARSCH: I have taken it down  
8 dramatically.

9 HEARING OFFICER HALLORAN: Okay. So  
10 you whittled them down to the two times  
11 Mr. Trzupsek was before Congress?

12 MR. HARSCH: Correct.

13 HEARING OFFICER HALLORAN: All  
14 right. And so we are all in agreement that these  
15 motions in limine should be granted and go  
16 forward.

17 MR. GRANT: Yes.

18 HEARING OFFICER HALLORAN: All  
19 right. The motion in limine filed by both parties  
20 on May 6 and then with Mr. Harsch supplementing  
21 his 100 or so publications and what not to -- go  
22 ahead.

23 MR. HARSCH: I would like to make  
24 just a real brief statement for the record.

1 HEARING OFFICER HALLORAN: Sure.

2 MR. HARSCH: As I stated in the  
3 motion, we can have no objection to the State's  
4 use of a book that the witness has written, but we  
5 think the witness ought to be judged, his views by  
6 the sum of his position, and that's why we have  
7 provided that, in reference to the list. As I  
8 mentioned during our status conference, I frankly  
9 view and still do, probably more so even, this  
10 motion as a -- as a slap on myself.

11 HEARING OFFICER HALLORAN: Could you  
12 speak up, please?

13 MR. HARSCH: As a slap on me  
14 personally for possibly presenting a witness to  
15 the Pollution Control Board at a hearing who is  
16 not truthful.

17 HEARING OFFICER HALLORAN: I don't  
18 think -- I don't know if Mr. Grant is going that  
19 way. Do you want to --

20 MR. HARSCH: And I just have to take  
21 some -- I started my career at the Pollution  
22 Control Board in 1973, and it's a long time since  
23 then, and this is the first time that's ever -- I  
24 believe happened. So to that extent, that's -- I



1 would like the Board maybe to hear that.

2 HEARING OFFICER HALLORAN: Okay.

3 And they will or at least read it.

4 So the motions in limine are  
5 granted, and Mr. Harsch stated that, I guess, he  
6 hasn't had an opportunity -- I think -- I can't  
7 remember if you faxed them to me or e-mailed them  
8 to me or delivered them, but I have them here, and  
9 I guess Mr. Harsch will mark them when the time  
10 comes.

11 MR. HARSCH: I have them here.

12 HEARING OFFICER HALLORAN: All  
13 right. Proceed, Mr. Grant.

14 BY MR. GRANT:

15 Q. Mr. Trzupsek, in 2011 you published a  
16 book called, "Regulators Gone Wild: How the EPA  
17 is Ruining American Industry;" isn't that correct?

18 A. That is correct.

19 Q. And it was largely critical of -- it  
20 wasn't specific to Illinois, but it was critical  
21 of regulators and regulations; isn't that correct?

22 A. It was -- I think that's too broad a  
23 description. It was critical of specific actions  
24 by Environmental Protection Agencies.

1 Q. Okay. That's fair enough. I  
2 have -- if you can turn to page 15 -- or 18 if you  
3 are not there of Complainant's Exhibit No. 18.

4 A. I'm here.

5 Q. Okay. And these are exhibits -- or  
6 excerpts that I took from this book, which, for  
7 the record, I bought on Amazon.com.

8 A. Thank you.

9 Q. You're welcome.

10 And I have done -- made a few  
11 changes by redacting a -- there was a number of  
12 references to specific settlement numbers in this  
13 case, and I have redacted them, because I --  
14 settlement is generally not used as evidence at  
15 the case, but I would also like to point out that  
16 the amount that the State asked for in civil  
17 penalty in its opening brief, which was 800 and  
18 some thousand dollars is at the same -- the same  
19 general area. So if one number is unreasonable,  
20 here's a number that we have in the record that's  
21 unreasonable, okay?

22 A. Okay.

23 Q. And in this -- this book you wrote  
24 one chapter on this Packaging Personified case,

1 correct?

2 A. I did. I did.

3 Q. And I am going to direct you to the  
4 first page of my exhibit, and this just -- and  
5 this is for the purpose of introducing the  
6 Packaging chapter.

7 So at the bottom of the -- of  
8 the last paragraph -- at the top of the last  
9 paragraph it says, In the chapters that follow, we  
10 will examine how environmental regulation and  
11 regulators in America have extended their reach to  
12 virtually every facet of our economy over the last  
13 40 years. These invasions have little to do with  
14 protecting the environment and much to do with  
15 preserving the atmosphere of fear that ensures  
16 that everyone with a green job remains employed.  
17 Did you write that?

18 A. I did.

19 Q. Okay. And is that your opinion?  
20 Not in this case specifically, but is that your  
21 view of environmental regulations and regulators?

22 A. The reason I wrote the entire book  
23 was because I couldn't say my view in just two  
24 sentences. So I think you have to read the whole

1 book. My -- my view in general is that there is a  
2 lot of overreach. I think we -- we don't have to  
3 look any farther than the recent headlines to show  
4 that sometimes regulators do get out over their  
5 skis a little bit.

6 Q. Did you read Peggy Noonan's article  
7 in the Wall Street Journal?

8 A. I did not.

9 Q. You should. It's online.

10 And Mr. Trzupke, I know  
11 Mr. Harsch is offended by this. The purpose of  
12 this is because there were so specific references  
13 to Packaging Personified that we do believe that  
14 it shows evidence of the bias against the  
15 regulations specifically in this case. I'm not  
16 saying you don't have a right to an opinion. I  
17 could tell you right not that -- not including  
18 this chapter, there is a couple of lawyers in my  
19 office that said, I agree with half of it, so --

20 A. Actually, some of the best  
21 compliments I got were from Agency employees.

22 Q. I wouldn't be surprised.

23 Well, let's go to the next page,  
24 which is the first page of the chapter that deals

1 with this Packaging Personified case, and the  
2 title is, "Jobs versus Retribution: The Price of  
3 Punishment." Do you know why you chose that term  
4 for the chapter?

5 A. I thought it was descriptive.

6 Q. Okay. How jobs -- what's the  
7 retribution? That's sort of the inflammatory word  
8 in there. What does retribution refer to?

9 A. Well, it -- the penalty demands and  
10 not just me, but again, people in my side of the  
11 aisle, for a case like this seemed excessive. It  
12 seemed that -- you know, beyond the pale of what I  
13 have seen in many other cases.

14 Q. Okay. But most of this issue here  
15 has been on the economic benefit of non-compliance  
16 when it comes to penalty, would you agree?

17 A. That's my understanding, yes.

18 Q. And that's kind of what we are here  
19 for right now for this hearing.

20 A. Right.

21 Q. The Board really just wants to know,  
22 what was the economic benefit of the  
23 non-compliance. I understand that the statute  
24 requires the Board to assess a penalty that

1 removes -- or that at least recovers the economic  
2 benefit of non-compliance unless it would be  
3 unreasonable to do so. I think that's how it's  
4 put. You understand that that's in the statute?

5 A. I do.

6 Q. So when we are talking about the  
7 overall penalty and the demands and stuff,  
8 wouldn't you agree that most of this is two  
9 different calculations of the economic benefit of  
10 non-compliance?

11 A. I think that the length that this  
12 case has gone on, you know, when you look at the  
13 PCB website, I think this is the second oldest  
14 case, and I understand that -- economic benefit  
15 calculations and how they are done. I also know  
16 that frequently in spite of the economic benefit  
17 calculation cases are settled relatively quickly  
18 for a number that's much less. So it has always  
19 seemed odd to me that this one has gone on so  
20 long.

21 Q. I don't want to ask about specifics,  
22 because I agree with you. Most of enforcement  
23 cases are settled.

24 A. They are.

1 Q. We don't do trials every day.

2 A. Right.

3 Q. I don't want to get into specific  
4 settlement discussions, but let me just ask you,  
5 to what -- what's your level of knowledge of  
6 settlement offers from both sides and the amount  
7 of settlement discussions? Do you have any  
8 personal knowledge of --

9 A. I do not.

10 Q. Okay. I would like you to go to the  
11 second page, 42. Down at the bottom you are  
12 talking specifically about Packaging Personified  
13 and its owners here, and there is this statement,  
14 "Given their type of operation and levels of  
15 emissions, Imburgia and Muccianti's plant  
16 according to Illinois rules should have an  
17 incinerator called a thermal oxidizer to destroy  
18 emissions from the process." Do you see that?

19 A. I do.

20 Q. That's different from the position  
21 that Packaging is taking in this case, or at least  
22 for the period of 1995 through 2002?

23 A. I think Packaging is saying that  
24 they should have been destroying the emissions on

1 press number 4 for that period is my  
2 understanding.

3 Q. Okay.

4 A. They are admitting that.

5 Q. But not for press number 5?

6 A. That press number 5 was controlled,  
7 correct.

8 Q. And, in fact, you say, the company  
9 dutifully complied -- going on to page 43 now --  
10 spending over a third of a million dollars to  
11 collect emission from its presses. And I won't  
12 get into the legal fees. Is that the Ship & Shore  
13 oxidizer device that they use?

14 A. The Ship & Shore, the consulting  
15 cost, the permanent total enclosure, all of it is  
16 estimated to about a third.

17 Q. Yeah. I mean, those numbers are  
18 familiar and you have --

19 A. Right.

20 Q. -- dealt with them? Okay.

21 Let's get to page 44, and down  
22 at the third paragraph, Whatever discretion that  
23 Illinois EPA might have otherwise exercised was  
24 eliminated by the Illinois administration in its



1 seemingly insatiable need for cash. Governor Rod  
2 Blagojevich was running up billions in debts, et  
3 cetera.

4 A. Yes.

5 Q. Okay. Was that -- that was your  
6 belief -- and we are talking specifically about  
7 Packaging Personified's case here. As far as the  
8 settlement position or the weight issue position  
9 of the State, do you really believe that it was  
10 tied to financial problems caused by Rod  
11 Blagojevich?

12 A. Well, at the time -- you know, it  
13 was well known at the time and you often heard it  
14 from agency employees how the governor was  
15 sweeping the environmental funds. That was a  
16 common complaint in Springfield, both on the  
17 penalty side and then the fees side, sweeping it  
18 and using it for other money and how tight the  
19 budgets were.

20 And it was -- all of a sudden we  
21 saw in the consulting community Illinois go from  
22 one of the states that you could really negotiate  
23 with and was a little more business friendly, and  
24 it flipped to -- to the detriment of the State to

1 one that now has the responsibility -- now has the  
2 reputation and on my side as one of the more  
3 difficult ones; whereas, Indiana went completely  
4 the other way, from one of the more difficult ones  
5 to the easier ones.

6 That happened when all this  
7 budget stuff was going on. The policy that the  
8 agency adopted that if you are a day late on your  
9 CAAPP application, your CAAPP reapplication, it's  
10 \$10,000. No -- you know, no negotiation, happened  
11 at this time, which is different, again, than most  
12 other states, and compounded by the fact that the  
13 State has a -- it's own unique little CAAPP  
14 reapplication deadline that other states don't  
15 have.

16 So when you see those little  
17 kind of gotchas coming up that seem intended to  
18 fund, and you see -- you know, you hear all these  
19 complaints about how the Agency is hurting for  
20 money -- again, I put those dots together and  
21 said, maybe that's what's going on. Maybe this is  
22 just about the budget.

23 Q. Okay. So essentially this -- the  
24 way I read this chapter is Illinois EPA was

1 intransigent on the penalty, and the reason was  
2 the State's need for cash; is that correct?

3 A. Well, yeah, that's a simplification  
4 of it, but I suggested that that might be the  
5 reason, yeah.

6 Q. Okay. How about -- well, let me  
7 stop there. The Pollution Control Board entered  
8 a -- issued a civil penalty of \$456,000 in this  
9 case.

10 Do you believe that penalty is  
11 within the scale of reasonable given their  
12 requirement to remove economic benefit of  
13 non-compliance?

14 A. What was the number that they  
15 proposed?

16 Q. 456,000. What they did is they  
17 entered a final order assessing a 456,000 and  
18 change civil penalty and then reconsidered it and  
19 sent it back. So what we are doing today is to --

20 A. Okay.

21 Q. That was the number that was  
22 originally -- was originally calculated by the  
23 Board.

24 A. I personally think, Mr. Grant, that

1 that is excessive. I think the process itself,  
2 and especially in this case, is a huge penalty,  
3 and, you know, throwing on another 400 plus  
4 thousand on to what Packaging has already had,  
5 yeah, I do think that's excessive.

6 Q. Okay. Now, just below that you have  
7 a statement that says, "With the governor  
8 desperate for every dollar he could get,  
9 evenhanded negotiation was no longer an option."  
10 I understand -- and it reads very well, by the  
11 way.

12 A. Thank you.

13 Q. I think you said you are really --  
14 you are not familiar with all of the details of  
15 back and forth negotiations?

16 A. No, no.

17 Q. Okay. Let's go to page 47, which is  
18 the second to last page of this exhibit.

19 A. Okay. Got it.

20 Q. Going on, I am going to the --  
21 halfway down the page there is a sentence that  
22 says, "This kind of regulatory intransigence  
23 and -- and again we are talking about the  
24 Packaging Personified case -- bureaucratic

1 bungling is the pattern time and time again in  
2 state after state across the nation." In that  
3 chapter you're characterizing this case?

4 A. Yes.

5 Q. And Illinois EPA has approached  
6 dealing with Packaging Personified in the case?

7 A. Yes.

8 Q. And then finally the last page is an  
9 acknowledgement section, and in the  
10 acknowledgement section you acknowledge -- you  
11 thank Dominic Imburgia and Phyllis Muccianti  
12 personally for their help and that sort of thing?

13 A. Well, I think, you know, for the  
14 record, let's read that whole paragraph.

15 Q. Well, I actually would have to go --  
16 I didn't want to make this thing too big, but I  
17 got the book, if you want to see it.

18 A. I have got it right here.

19 Q. You have that with you?

20 A. I carry my own around, but I think  
21 it's important to have the right context here.

22 Q. Yes, I agree.

23 A. So the paragraph is, "Finally, my  
24 profound thanks to the hardworking men and women

1 whom it has been my privilege to serve during my  
2 primary career as a consultant to the industry.  
3 These are not faceless corporate executive who  
4 make distant decisions in the boardroom. They are  
5 instead, talented, tireless men and women working  
6 on the factory floor who use ingenuity and hard  
7 work to provide a living for their fellow  
8 employees and prosperity for their country.

9 My job is to keep the EPA off of  
10 their backs so they continue to do that important  
11 work, and it has been an honor to help them.  
12 There are too many to call by name, but among  
13 those that I am proud to call both client and  
14 friend are" -- and then I list a number of clients  
15 and Dominic and Phyllis are among them.

16 Q. Sure. I understand that you have a  
17 right to write the book. You have a right to your  
18 opinion. My concern is with respect to what you  
19 have put in here, that it could bias your opinion  
20 that you are giving here today.

21 A. And Mr. Grant, as a scientist -- and  
22 I understand a lawyer is an advocate, and you are  
23 advocating your side, and I understand why you are  
24 doing what you are doing, and I respect that.

1                   As a scientist, and in  
2 particular as a scientist trained by the Jesuits,  
3 science is sacred, and to suggest that anything  
4 about the technical details of my testimony would  
5 be affected by my bias or my personal opinions is  
6 offensive to me, and absolutely incorrect. I  
7 would never compromise science. I love science.  
8 I love the scientific method, and anything  
9 technically I do, I stand behind 100 percent.

10           Q.       Okay. And just for the record, a  
11 lawyer trained by the Jesuits, but only in law  
12 school.

13           A.       Loyola?

14           Q.       Yeah.

15           A.       Me, too.

16           Q.       Yeah. I think we did that four  
17 years ago.

18           A.       I think we did.

19                   MR. GRANT: That's it. That's all  
20 I've got.

21                   HEARING OFFICER HALLORAN:

22 Mr. Grant, I just for the record --

23                   MR. GRANT: I should move this in as  
24 an exhibit.

1 HEARING OFFICER HALLORAN: For the  
2 record -- I'm sorry, Mr. Grant. For the record, I  
3 just want to clarify that the State has redacted  
4 portions of this Exhibit 18?

5 MR. GRANT: That's correct.

6 HEARING OFFICER HALLORAN: All  
7 right. Okay. Go ahead.

8 MR. GRANT: I would like to move it  
9 into evidence.

10 HEARING OFFICER HALLORAN:  
11 Mr. Harsch?

12 MR. HARSCH: I have no objection.

13 HEARING OFFICER HALLORAN:  
14 Complainant's Exhibit 18 is admitted.

15 (Whereupon, COMPLAINANT'S  
16 Exhibit No. 18 was admitted  
17 into evidence.)

18 HEARING OFFICER HALLORAN: Before we  
19 move on, Complainant's Exhibit 15 in here that Mr.  
20 Trzupsek was using, Mr. Harsch was directing him  
21 on, it was Mr. Mattison's letter or something, but  
22 is this from the 2009 case?

23 MR. GRANT: No. This is -- what  
24 this is, is word-for-word our 213(f) disclosures



1 to Packaging made on November 15th of last year.  
2 So rather than prepare an expert report, I just --  
3 we just copied that into here; so hopefully  
4 word-for-word, typos included. This is our 213(f)  
5 expert witness disclosure, all the conclusions and  
6 opinions.

7 I think Mr. Harsch doesn't want  
8 to call it an expert report, but we do want to  
9 admit it. He already used it, and it's going to  
10 be used for Mr. Mattison's testimony.

11 HEARING OFFICER HALLORAN: Okay. I  
12 guess for future reference you should put  
13 something on here to identify it, instead of  
14 people going through the record and saying --

15 MR. GRANT: Well, I didn't know that  
16 he was going to use it beforehand. I should have  
17 figured that we would have used it.

18 HEARING OFFICER HALLORAN: Well, I  
19 mean, to put something -- write something on there  
20 or type it on. There is no date and --

21 MR. GRANT: It's been a busy week.

22 HEARING OFFICER HALLORAN: Well,  
23 you've had a lot of time, but I understand. All  
24 right. Mr. Harsch, your witness.

REDIRECT EXAMINATION

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BY MR. HARSCH:

Q. While you were reading from that book, you didn't read all the acknowledgements, did you?

A. I did not.

Q. Would you continue to read those acknowledgements, because I am proud of the next couple of sentences.

A. From where I left off?

Q. Yes.

A. There are too many to name, but among those that I am proud to call both client and friend are Ed Kalebich, K-A-L-E-B-I-C-H, and Beau Moran, M-O-R-A-N, at Robbins Community Power; John LaRoi, L-A-R-O-I, at Vonco Products; Dominic Imburgia, Phyllis Muccianti, Joe Imburgia and Tim Piper at Packaging Personified; Bob Schultz at Vision Integrated Graphics; Tom Nicolleto, N-I-C-O-L-L-E-T-O, Ben Nguyen, N-G-U-Y-E-N and Roger Darlan, D-A-R-L-A-N, at DS Containers; Chuck Tyburk and Bill Tyburk at EnGlobal, E-N-G-L-O-B-A-L, and Scott Shaver and Mark Betz at Catalytic Products International.

1                   These are the kind of people  
2 whose efforts have made America a proud and  
3 prosperous nation, and it is my sincere prayer  
4 that they and their descendants will continue on  
5 this path.

6           Q.       Don't you make some other  
7 acknowledgements?

8                   HEARING OFFICER HALLORAN: I'm  
9 sorry, Mr. Harsch. Could you speak into the mike?  
10 I'm having trouble.

11 BY MR. HARSCH:

12           Q.       I'm sorry. Don't you make some  
13 other acknowledgements in the book?

14           A.       I also acknowledge some colleagues  
15 including Jim and Linda Huff, Roy Harsch, Renee  
16 Cipriano, Kathleen Bassi, Steven Murawski, Nancy  
17 Rich and Bill Anaya.

18           Q.       Thank you.

19           A.       You're welcome.

20           Q.       I'm honored to be on there. There  
21 were questions by Mr. Grant about not having  
22 personal knowledge about going back to Packaging's  
23 activities prior to 2001 when you were first out  
24 there. Do you normally rely on your -- on

1 information from your clients on their activities,  
2 past activities of filling out applications, et  
3 cetera?

4 A. Yes, I do.

5 Q. I think maybe we need to explain it  
6 again. Press 5 has essentially -- as it was  
7 originally installed, if I understand it  
8 correctly, if I don't, please correct me,  
9 recirculated hot air into the dryer?

10 A. Yeah, but the important point is  
11 through -- as combustion.

12 Q. And then it -- and then it also  
13 recirculated part of the exhaust through and into  
14 the combustion chamber where the solvent would be  
15 combusted?

16 A. That's correct.

17 Q. And is it your understanding that  
18 that second function is what was removed when it  
19 was hooked up to the thermal oxidizer?

20 A. That is my understanding, yes.

21 Q. And that's because such an oxidizer  
22 is designed to have solvent-laden airs sent to it?

23 A. Yeah, the RTO, or regenerative  
24 thermal oxidizer, is extremely thermally

1 efficient, typically around 95 percent thermal  
2 efficiency. So you -- once it's -- once it's lit,  
3 once it's lit off and heated up, it wants  
4 solvent-laden air to keep the temperature up, and  
5 it doesn't really need any gas. It just needs the  
6 air stream.

7 Q. So it would still -- it still can be  
8 a recirculating oven, have a recirculating oven as  
9 it presently stands out there and not be  
10 configured so that it would recirculate the  
11 solvent back through the combustion cycle?

12 A. Correct, yeah.

13 Q. I think you testified in response to  
14 a question that it was one of the Packaging  
15 maintenance people that showed you the ductwork;  
16 is that correct?

17 A. Correct.

18 Q. And after he showed you the  
19 ductwork, did you then perform any evaluations of  
20 those sampling points vis-a-vis the duct turns, et  
21 cetera, as required by the rules?

22 A. Yeah. We made sure they met the  
23 requirements of method 1, which generally requires  
24 that you have a straight run of at least two and a

1 half duct diameters to assure laminar flow, that  
2 you can measure properly.

3 So we made sure that it -- that  
4 we chose sampling points that were in accordance  
5 with method 1 in both cases, and then when I did  
6 the actual flow measurement, I did a cyclonic flow  
7 check to make sure that, indeed, the flow was  
8 laminar, and that there wasn't any obstructions  
9 that would have caused turbulence.

10 Q. So it wasn't Packaging Personified's  
11 maintenance person going out and telling you to  
12 test right here, test over here?

13 A. No, not the particular spots. No,  
14 no.

15 HEARING OFFICER HALLORAN: 64, and I  
16 have got --

17 MR. HARSCH: I would just like to  
18 mark -- we haven't identified them. So let's  
19 change the numbers. Is that easier? However you  
20 would prefer I do it.

21 HEARING OFFICER HALLORAN: Whatever  
22 is easier.

23 MR. HARSCH: What's the last one you  
24 have got?

1 (Whereupon, RESPONDENT'S Exhibit  
2 No. 66 was marked for  
3 identification.)

4 BY MR. HARSCH:

5 Q. Showing you a document that we have  
6 marked as Respondent's Exhibit 66, it is my notice  
7 of filing and a response to complainant's motion  
8 in limine and cross motion. It had attached to it  
9 publications by Richard Trzupsek on environmental  
10 and energy matters. You have seen this list of  
11 documents before, right?

12 A. I have.

13 Q. And is this basically a pretty good  
14 compilation of your recent publications?

15 A. Yeah. I obviously enjoy writing,  
16 and this is a pretty good list.

17 Q. Does the -- you have written now  
18 three books, correct?

19 A. I have written two, and I am -- I  
20 contributed to a third.

21 Q. And how active are you at the  
22 Heartland Institute?

23 HEARING OFFICER HALLORAN: Excuse  
24 me, Mr. Harsch. I guess I misunderstood. If we

1 are going to question Mr. Trzupsek --

2 MR. HARSCH: It's about the next to  
3 last question.

4 HEARING OFFICER HALLORAN: I  
5 can't -- we need publications, and we need copies  
6 of these things in your questioning. I stated  
7 earlier, basically the only thing you are  
8 submitting is the Congressional testimony, but if  
9 you are referring to this, which I suggested if  
10 you were in the conference call and you put in a  
11 CV, that would be fine, but I can't -- no. I  
12 can't accept this and continue this questioning.  
13 I have no copies, nothing, and --

14 MR. HARSCH: I am simply asking him  
15 about the number of his publications.

16 HEARING OFFICER HALLORAN: Well, you  
17 are going into the Heartland Center and --

18 MR. HARSCH: I'm not going to go  
19 into the particulars of it. I just wanted to know  
20 what position he did with Heartland. That's all.  
21 I have about one more question.

22 HEARING OFFICER HALLORAN: Do you  
23 remember me, though, asking if you were going to  
24 talk about this at the hearing you need copies of



1 this?

2 MR. HARSCH: Yes, and I am providing  
3 it -- I have provided copies of the exhibit.  
4 That's what I understood.

5 HEARING OFFICER HALLORAN: Of what  
6 exhibit?

7 MR. HARSCH: Providing this as a  
8 copy as an exhibit, which is what I --

9 HEARING OFFICER HALLORAN: You need  
10 to do what Mr. Grant did. He supplied part of the  
11 book that he was going to question Mr. Trzupsek on.  
12 You submitted this list the other day, and as I  
13 said --

14 MR. HARSCH: And I believe I was --  
15 I understood that I was directed to provide it as  
16 an exhibit along with examples of the -- several  
17 of the documents, and that's what I have done.

18 HEARING OFFICER HALLORAN: I  
19 suggested -- in fact, I directed that we need  
20 copies of everything we talked about here.

21 MR. HARSCH: I am not presenting  
22 them all as --

23 HEARING OFFICER HALLORAN: I said it  
24 would be great -- it would be acceptable if you

1 put all of the publications on his CV, and that's  
2 fine.

3 MR. HARSCH: I'm sorry. I did not  
4 understand you to that extent.

5 HEARING OFFICER HALLORAN: But, I  
6 mean, if you are going to talk about it -- my ears  
7 perked up when you said -- you mentioned Heartland  
8 and how long have you been with them, and I can't  
9 imagine the next question coming out, but you can  
10 wrap it up, and you said you have one more  
11 question and then you were going to get into the  
12 Congressional hearing?

13 MR. HARSCH: If you would prefer,  
14 Mr. Hearing Officer, I would be happy to ask the  
15 witness if he would include this as -- along with  
16 his CV.

17 HEARING OFFICER HALLORAN: Okay.  
18 That would be great, and that's what we discussed.

19 MR. HARSCH: I'm sorry. I did not  
20 understand that to be the case.

21 HEARING OFFICER HALLORAN: Thank  
22 you.

23 BY THE WITNESS:

24 A. Before you ask, can I correct my

1 last answer on how many books have I ever written?

2 BY MR. HARSCH:

3 Q. Sure.

4 A. Three and contributed to four is the  
5 correct answer. I'm sorry.

6 Q. Mr. Trzupsek, since I prepared this  
7 list, it was prepared under my direction, would  
8 you have any problem if we added it to your CV?

9 A. No. I think that would be fine.

10 MR. HARSCH: So with Mr. Grant's  
11 leave, we will just appendage to his CV.

12 MR. GRANT: That's fine with me. I  
13 don't know what --

14 HEARING OFFICER HALLORAN: This is  
15 acceptable?

16 MR. GRANT: As a list of -- I'm  
17 not -- you know, I mean, as a list of what he  
18 wrote attached -- what he has written attached to  
19 his publication part of his CV, that's fine.

20 MR. HARSCH: I will provide a  
21 revised CV with this attached to it.

22 MR. GRANT: Are we talking about  
23 this testimony and slides and stuff like that,  
24 too?

1 HEARING OFFICER HALLORAN: Well, we  
2 are talking about that. He is -- is this the  
3 Congressional hearing?

4 MR. HARSCH: And then what I would  
5 like to mark then as the remainder of the  
6 document, as Exhibit 66, and ask Mr. Trzupsek what  
7 they are.

8 HEARING OFFICER HALLORAN: If we  
9 could hold on a minute, to make this clean,  
10 because now this is kind of messed up, for lack of  
11 a better word.

12 Mr. Grant and Ms. Sangha, would  
13 you just accept this as here so Mr. Harsch would  
14 not have to attach it to his CV, this whole motion  
15 in limine?

16 MR. GRANT: I don't have a problem  
17 with it, because it doesn't impact his  
18 credibility. This is to restore his credibility.  
19 Our stuff was specific to this case, but to  
20 generally -- I mean, obviously, you know, we think  
21 maybe there is a bias against the Illinois EPA and  
22 a regulatory thing. To the extent that this, you  
23 know, rehabilitates his opinion -- and I don't  
24 think it's significant enough for us to argue

1 about it. It's Congressional testimony. There  
2 are all sorts of environmental --

3 HEARING OFFICER HALLORAN: That's  
4 fine, yeah. Our only problem was talking about  
5 these other publications and --

6 MR. GRANT: I don't think he is  
7 going to do that. He is not going to put the --  
8 the text of those publications into evidence.

9 MR. HARSCH: No intention.

10 HEARING OFFICER HALLORAN: So  
11 Respondent's Exhibit No. 66 is accepted without  
12 objection.

13 (Whereupon, RESPONDENT'S Exhibit  
14 No. 66 was admitted into  
15 evidence.)

16 BY MR. HARSCH:

17 Q. I have one question with respect to  
18 the list.

19 And explain what the Heartland  
20 Institute is and what your position is there.

21 A. The Heartland Institute is a  
22 conservative think tank that does research and  
23 publications on a number of issues, including  
24 environmental issues. They asked me if I would be

1 a policy advisor in environmental and I said,  
2 sure. It's strictly voluntary. I'm not -- I  
3 don't get paid for it, and I help them out in  
4 framing environmental issues that they wish to  
5 comment on.

6 Q. And have you been invited to testify  
7 before a Congressional hearing?

8 A. I have.

9 Q. And what are -- the remainder of  
10 Exhibit 66, you provided these to me. What -- can  
11 you explain what these are?

12 A. Sure. I have been asked to testify  
13 before the Environment Subcommittee of the Space  
14 Science -- I'm sorry. Science, Space and  
15 Technology Committee of the House on two  
16 occasions; once on June 6th, 2012, and once on  
17 February 14th of this year.

18 What you have is a copy of my  
19 written testimony, a copy of my oral testimony,  
20 and I believe the truth and testimony form that I  
21 was required to submit as well.

22 Q. And in general, very shortly, can  
23 you explain the positions that you were testifying  
24 on?

1           A.       Well, we are having what I think is  
2       a healthy discussion in the country on the state  
3       of the environment and where we go with  
4       environmental policy from here. I, of course,  
5       have a perspective from being on the business  
6       side, and one of -- the first thing they asked me  
7       to testify was about the cost and benefits of  
8       environmental regulation, because USEPA frequently  
9       justifies more and more regulation. Even though  
10      the world has gotten cleaner and the EPA has  
11      always done a great job, we see, you know,  
12      regulations being turned out in record numbers for  
13      a cleaner and cleaner world.

14                   And the EPA routinely  
15      justifies -- USEPA I am talking about -- this  
16      increased regulation based on these incredible  
17      savings, that if you add them all up would pay off  
18      the national debt. So one of the things they  
19      asked me to testify was where do those numbers  
20      come from, and I talked about where those numbers  
21      come from and how to -- just a poor city boy like  
22      me, they seem a little convoluted at times.

23                   They also wanted to talk the  
24      second time about what the environment is like,

1    how much progress we have made, and how much  
2    progress is left to make.  And again, that's part  
3    of that discussion about it's not 1970 anymore.  
4    We have done a lot, and maybe it's time to go into  
5    more of a maintenance mode and recognize some of  
6    the priorities may have to change a little bit,  
7    not to make the environment worse, not to get rid  
8    of the EPA, but to recognize the incredible  
9    progress that we have made.

10           Q.       I think this whole question of your  
11    credibility is probably sufficiently addressed  
12    hopefully.  Has your testimony ever been  
13    questioned anywhere else?

14           A.       No, sir.

15           Q.       That you are biased?

16           A.       No, sir.

17           Q.       Have you been accused of being  
18    biased?

19           A.       I have never been accused of being  
20    biased before, no.  And if I might just add, you  
21    know, like any consultant, anybody who is in my  
22    business serving the business community, it's our  
23    job to ensure that that our clients are in  
24    compliance, but they are in compliance in a way



1 that makes sense for their business. And if I  
2 could permit -- be permitted to just give one  
3 example of what that means.

4 I have one client who in order  
5 to comply with Illinois' eight-pound per hour rule  
6 was advised by -- by Illinois EPA, and in good  
7 faith. This is not a crack at Illinois EPA --  
8 that you needed to put in afterburners,  
9 incinerators, and they spent almost a million  
10 dollars on a couple of afterburners. They were in  
11 the attainment area, and they did that to make  
12 Illinois EPA happy.

13 When I was hired as their  
14 consultant -- well, the other part of the  
15 eight-pound per hour rule is that you don't have  
16 to control it if it doesn't meet Illinois'  
17 definition of photochemically reactive, so -- and  
18 they didn't. They had zero emissions of  
19 photochemically reactive material. So they  
20 essentially spent almost a million dollars on  
21 incinerators that they didn't need. And it's  
22 not -- I understand it's not the agency's fault to  
23 give advice. Neither is it the agency's mission  
24 to give good business advice. It's my mission.

1 I didn't help them get around a  
2 rule. I helped them comply with what the rule  
3 says in a way that makes sense for their business,  
4 and that's what I do.

5 Q. And I think it came up in your  
6 cross-examination. When you first went to  
7 Packaging, what were you retained to do?

8 A. To get them into compliance.

9 Q. And did you make suggestions of what  
10 they should do?

11 A. I did.

12 Q. And how did they respond to your  
13 suggestions?

14 A. From get-go, Dominic and Phyllis and  
15 Joe were all -- we just want to put this behind  
16 us. We want to get in compliance. We want to be  
17 the good corporate citizen. Just tell us what we  
18 need to do.

19 Q. And you had previously testified  
20 about preparing the annual emissions reports that  
21 hadn't been submitted and permit applications and  
22 everything else; is that correct?

23 A. Yes, I did.

24 Q. And in this proceeding you have

1 never told Packaging Personified not to comply  
2 with the regulator?

3 A. No. I would never do that.

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

6 HEARING OFFICER HALLORAN: Thank  
7 you, Mr. Harsch. Mr. Grant?

8 RECROSS-EXAMINATION

9 BY MR. GRANT:

10 Q. I just have a question on the  
11 selection of the inlet point. I was a little  
12 confused by what just happened, but I mean, on  
13 direct you testified that the inlet point was  
14 chosen by a maintenance person at Packaging,  
15 correct?

16 A. I wouldn't say -- and I think the  
17 use of the word "point" is what's confusing here.  
18 It's -- I -- the maintenance person directed me to  
19 the ductwork that would -- you know, where the  
20 inlet was. So my question to them was, show me  
21 where the gas is coming from, being pulled from  
22 the dryer, before the recirculation loop. Show me  
23 where that ductwork is. So they pointed me to  
24 that ductwork, and then I found the point that met

1 method 1 requirements within that length of  
2 ductwork.

3 Q. Using where they showed you?

4 A. Correct.

5 MR. GRANT: That's it.

6 HEARING OFFICER HALLORAN: Thank  
7 you. Do you have anything further?

8 MR. HARSCH: No.

9 HEARING OFFICER HALLORAN: Thank  
10 you, Mr. Trzupek.

11 Let's go off the record.

12 (Whereupon, a discussion was had  
13 off the record.)

14 BY MR. GRANT:

15 Q. I am going to -- I am going to quote  
16 you from your deposition transcript, so --  
17 regarding the selection of the point. I am going  
18 to say were you asked this question, and did you  
19 give this answer.

20 "Do you remember where your  
21 inlet point was?"

22 Answer: "The inlet point was a  
23 point that was identified for me. I'm not an  
24 expert in press design. So I told -- it's

1 misspelt Packing -- Packaging I want a point at  
2 the inlet before the oven, and I want a point at  
3 the outlet for that portion of the stack gas that  
4 gets exhausted, and they pointed me to those two  
5 points." Is that your testimony?

6 A. Yes.

7 Q. Is that consistent with what -- the  
8 way you just answered?

9 A. Yes, it is.

10 MR. GRANT: Now I am done.

11 HEARING OFFICER HALLORAN:

12 Mr. Harsch?

13 MR. HARSCH: No further.

14 HEARING OFFICER HALLORAN: You may  
15 step down.

16 Let's go off the record.

17 (Whereupon, a discussion was had  
18 off the record.)

19 HEARING OFFICER HALLORAN: Back on  
20 the record. It's approximately 3:55. Mr. Harsch?

21 MR. HARSCH: At this point in time I  
22 call Christopher McClure, please.

23 HEARING OFFICER HALLORAN: Please  
24 raise your right hand, Mr. McClure, and the court

1 reporter will swear you in.

2 (Whereupon, the witness was duly  
3 sworn.)

4 CHRISTOPHER McCLURE,  
5 having been first duly sworn, was examined and  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HARSCH:

9 Q. Now, in front of you, you should  
10 have what's been marked as Exhibits 64 and 65.

11 A. I do.

12 MR. GRANT: Could I see what you  
13 have got here?

14 BY MR. HARSCH:

15 Q. Are you familiar with these  
16 documents?

17 A. Yes.

18 Q. Before I get there, I guess, would  
19 you please state your full name for the record?

20 A. Christopher McClure.

21 Q. And you previously testified in this  
22 proceeding?

23 A. I did.

24 Q. And who are you currently employed

1 by?

2 A. Crowe Horwath.

3 Q. And who were you retained with when  
4 you testified the last time?

5 A. Previously I was employed with  
6 Navigant Consulting in 2009.

7 Q. And outside of that change in who  
8 you were employed with, your prior background,  
9 curriculum vitae, et cetera, is accurate?

10 A. Yes.

11 Q. You previously testified to what you  
12 thought was the appropriate economic benefit in  
13 this case?

14 A. That's correct.

15 Q. And can you tell me -- I draw your  
16 attention to Exhibit 65.

17 Can you explain what this  
18 document is? It's the letter to John Simon, my  
19 partner, dated November 19th, 2011.

20 A. Yes. This is a letter from myself  
21 to John Simon, Drinker Biddle, dated October 19th,  
22 2011, and it contains a calculation of an economic  
23 benefit of \$12,077, which was calculated under the  
24 assumptions that are listed here in the letter.

1 So it's a very straightforward calculation along  
2 the lines of what I had prepared initially in this  
3 case, and then attached behind that calculation is  
4 an invoice to Packaging Personified from ARI  
5 Environmental.

6 Q. Which you were then -- you were here  
7 earlier when Mr. Imburgia testified that that's a  
8 true and accurate copy of the bill they got for  
9 the stack test?

10 A. That's correct.

11 Q. And you were provided that by  
12 Packaging?

13 A. Yes, I was.

14 Q. And in this calculation for an  
15 economic benefit, what control costs did you  
16 utilize?

17 A. Well, walking through the  
18 assumptions that were included here, Item 1, that  
19 there was no cost to Packaging as a result of  
20 shutting down press 4, shifting to press 5 in  
21 December of 2002; Item 2, a cost of \$30,000 and I  
22 was provided with a range of 15 to \$30,000 for  
23 constructing a total temporary enclosure around  
24 press 5.





1 Q. This is a true and accurate copy,  
2 correct?

3 A. Yes, correct.

4 Q. I'll draw your attention to what I  
5 have marked as Exhibit 64, which was a letter from  
6 John Simon dated August 9th, 2012.

7 Would you tell me what this  
8 document is?

9 A. Yes. This is a letter from myself  
10 to John Simon. It's very similar to the one that  
11 we just covered. The primary distinction here is  
12 Item 2, which is a different assumption. The cost  
13 of constructing this time a permanent total  
14 enclosure would have been \$5,000, and the same  
15 stack test in the same amount was included, and  
16 similarly, page 3 includes the calculation of the  
17 economic benefit. You see the timeframe, and the  
18 costs that are included, and the result is \$3,662,  
19 which is the economic benefit enjoyed by Packaging  
20 under those assumptions.

21 Q. And do you have an opinion as to  
22 whether those are the appropriate economic  
23 benefits to Packaging, assuming that it could have  
24 demonstrated compliance by conducting a formal

1 stack test?

2 A. Yes. This calculation reflects  
3 exactly that, the assumptions as they are listed,  
4 and the methodology, it follows the guidelines as  
5 constructed by the USEPA and the BEN manual, and  
6 as I previously testified to in this matter and  
7 also follows the notion of the least or lowest  
8 cost of compliance that's endorsed in Illinois as  
9 well. So as making these assumptions, then, yes,  
10 this is the calculation that results from the  
11 inputs of those variables.

12 MR. HARSCH: At this point in time I  
13 will introduce 64 and 65.

14 MR. GRANT: No objection.

15 HEARING OFFICER HALLORAN:  
16 Respondent's Exhibit No. 64 and 65 are admitted  
17 into evidence without objection.

18 (Whereupon, RESPONDENT'S Exhibit  
19 Nos. 64-65 were admitted into  
20 evidence.)

21 BY MR. HARSCH:

22 Q. And Question 4, interest due for  
23 nonpayment of the economic benefit component of  
24 the penalty, was that included in your

1 calculations?

2 A. Not at this time.

3 Q. Can you explain what -- how that  
4 would be done?

5 A. An interest calculation?

6 Q. Yes.

7 A. It's simply you would pick a  
8 timeframe at which a certain dollar amount is due  
9 and you would multiply it by the applicable rate  
10 for the time period at issue. So that's a  
11 straightforward calculation.

12 Q. So it would be economic benefit you  
13 calculated times the time period?

14 A. Correct.

15 Q. Have you -- there were a number of  
16 comments, statements of fact, made by the Board, I  
17 guess, in their findings in the Board's opinion  
18 where they discussed the economic benefit  
19 components. That's the March 1st, 2012 opinion  
20 that granted the motion to reconsider. Are you in  
21 agreement with all of those?

22 A. Well, I think we have to go through  
23 them, but in general, my understanding of it is  
24 that the Board was focused on a couple of items;

1 one, that the lowest cost alternative, which is  
2 really a key attribute of correctly calculating  
3 economic benefit has not yet been considered or  
4 that there is another alternative that we are  
5 still here today to review, which I agree with,  
6 and they need to -- of course, we need to  
7 understand what the lowest cost alternative would  
8 be, and that's what we have calculated here in the  
9 exhibits that we previously discussed.

10 And then the motion for  
11 reconsideration discusses what occurred in the  
12 Board's opinion from the last hearing, and I  
13 reviewed that opinion as well. Generally  
14 speaking, it appears to me that the Board took the  
15 information from my calculations and from the  
16 calculations offered by Mr. Styzens. Generally it  
17 appears that the Board agrees and everyone agrees  
18 with the methodology that was employed to  
19 calculate economic benefit. Where we differ  
20 substantially are the variables that go into the  
21 model.

22 So everyone agrees as to the  
23 general framework, but the variables that are  
24 input are in dispute and, of course, as a result,

1 the output of the models vary significantly.

2 So it appears that the Board  
3 took an intermediate position attempting to split  
4 the difference between myself and Mr. Styzens by  
5 averaging some costs and selecting some time  
6 periods and coming up with a number that  
7 essentially splits the difference. I guess that  
8 is a way that -- they are free to do that.

9 It doesn't reflect a buildup of  
10 costs or a buildup of a model to understand what  
11 the actual results would be, and it also -- I  
12 guess at this point we understand that there are  
13 other lower cost alternatives that need to be  
14 considered. So those are the general comments  
15 that I had on the position of the Board and their  
16 approach for reconsideration.

17 Q. Are there other lower cost  
18 alternatives other than conducting a stack test?

19 A. As we discussed last time, we -- the  
20 variables that we included and that I included in  
21 my model in the last hearing, there was an  
22 alternative to use or to buy an RTO that was  
23 appropriately sized for the press in question.

24 So one of the key discussions

1 and key points of contentions was the appropriate  
2 size of the RTO, and the Board recognized and  
3 pointed out the excerpt from the BEN manual  
4 literature that indicates that when you have a  
5 company that has a situation where they are  
6 preparing for an increase in capacity and they  
7 purchase a control device or a compliance solution  
8 that is larger to accommodate future growth, in a  
9 sense they shouldn't be penalized for that.

10 So you have to assess the  
11 appropriate amount that was required to get into  
12 compliance. So using the numbers that we had last  
13 time, Mr. Styzens had a \$250,000 number for an RTO  
14 that was sized for three presses. My position was  
15 that the RTO should be sized appropriately for the  
16 one press at issue, and the estimate that I was  
17 provided was \$75,000 for an RTO that would be an  
18 appropriate size. So installing an appropriately  
19 sized RTO would have been another potential  
20 compliance approach.

21 Q. And that economic benefit was  
22 calculated and provided in your prior testimony?

23 A. That is correct.

24 Q. And that would be available even if

1 the Board were to find that -- somehow that we  
2 didn't establish that press 5 could be found to be  
3 in compliance if we had performed a formal stack  
4 test?

5 A. That's correct. They have that  
6 information and that is a lower cost alternative  
7 calculation.

8 Q. Is the concept of shutting down an  
9 emission source and transferring the business such  
10 as Packaging did consistent with the BEN model as  
11 far as you are concerned?

12 HEARING OFFICER HALLORAN: Could you  
13 speak up, Mr. Harsch? I don't know if the mike is  
14 not on or it's getting late in the game.

15 MR. HARSCH: I'm sorry.

16 HEARING OFFICER HALLORAN: It's  
17 really hard to hear.

18 BY MR. HARSCH:

19 Q. Strike that question.

20 Mr. McClure, Packaging has  
21 proposed -- did shutdown press 4 and transfer the  
22 business to press 5, and you were here earlier in  
23 the day when Mr. Imburgia testified how that was  
24 accomplished and his opinion they had the capacity



1 throughout all the years to have operated all of  
2 the business on press 5 without press 4. Is that  
3 concept consistent with the BEN model in your  
4 opinion?

5 A. Yes, it is. The BEN model or the  
6 BEN methodology requires that you evaluate the  
7 variables at issue given the company's specific  
8 business situation and the regulations that they  
9 are subject to at the time and to evaluate what's  
10 the lowest cost alternative for achieving  
11 compliance.

12 Clearly if you shut down a  
13 source of emissions then you wouldn't be required  
14 at that point, to my understanding, to purchase a  
15 control device for one that's not operating, and  
16 you can certainly transfer capacity, if you have a  
17 situation where that's feasible within the  
18 constructs of your business, and in my opinion  
19 listening to Mr. Imburgia, that's certainly what  
20 occurred with Packaging.

21 MR. HARSCH: I don't have any  
22 further questions. Thank you.

23 HEARING OFFICER HALLORAN:  
24 Mr. Grant?

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CROSS-EXAMINATION

BY MR. GRANT:

Q. Hi, Mr. McClure. Chris Grant.

First, your opinion only has to do with the economic benefit of non-compliance and not with a violation, correct?

A. My opinion has to do with the proper calculation of economic benefit.

Q. But not the violation? Not whether or not something was a violation?

A. Correct.

Q. Okay. Your -- let's see. In its 2009 order -- was it 2009? I thought it was.

Well, in its order the Board found Packaging in violation for operation of press 4 without control for seven years off the top of my head, 7 or 8 years, are you aware of that?

A. I believe that's what the order said.

Q. And your opinion contains no recovery of any economic benefit for the operation of press 4; is that correct?

A. I'm sorry. Can you restate your

1 question?

2 Q. Sure. Your opinion ignores  
3 violations for running press 4 without control  
4 from 1995 to 2002; isn't that correct?

5 A. The calculation as stated here  
6 includes that as the time period.

7 Q. I am asking you that as a question.

8 A. From 19 -- yes, it does, from  
9 1995 --

10 Q. It ignores it. In other words,  
11 hypothetically, we are ignoring that violation for  
12 the purpose the opinion; isn't that correct?

13 A. My opinion takes into consideration  
14 the time period that's included in these exhibits,  
15 which includes the time period that you are  
16 discussing and the costs that would have been  
17 required under these assumptions to obtain  
18 compliance.

19 Q. Your opinion recovers no economic  
20 benefit for the violations found by the Board from  
21 the operation of press 4 from 1995 to 2002?

22 A. That's not accurate.

23 Q. Yeah, it is accurate.

24 A. There is no -- the economic benefit

1 calculations that were provided to you both at the  
2 hearing and the ones that are here in these  
3 exhibits, the methodology is clear. The  
4 assumptions that are made are clear, and the  
5 timeframes that are outlined are clear.

6 Q. What you are doing is what the Board  
7 directed hearing on. You said hypothetically  
8 let's ignore the operation of press number 4 for  
9 the purpose of that, correct? Is that what the  
10 Board order said in March --

11 A. You're going to have to -- why don't  
12 you show me what you are referring to.

13 Q. This is your opinion; does your  
14 opinion include any consideration of the economic  
15 benefit for running press number 4 in  
16 non-compliance from 1995 through 2002?

17 A. The opinions that are stated in  
18 these exhibits --

19 Q. No. Does your opinion include that?

20 A. Yes, it does. And I am answering.  
21 These exhibits as stated here have the timeframe  
22 that's --

23 Q. I understand the timeframe.

24 A. And it's -- and the -- there is no

1 cost -- you can see the specific assumptions that  
2 are made throughout the report, so --

3 Q. Why don't you explain to me if --  
4 where you recovered the economic benefit of  
5 non-compliance for violations that were found by  
6 the Board -- that were found by the Board for  
7 running press 4 1995 -- for actually running and  
8 not ignoring -- from running press 4 through --  
9 from 1995 to 2002 without any control, whatsoever.

10 Now, that's a violation that was  
11 found by the Board. Does your opinion recover,  
12 you know, deal with the economic benefit of that  
13 violation?

14 A. It does, and you have to look to the  
15 variables of the specific --

16 Q. Show me where.

17 A. -- scenarios.

18 Q. Show me where. It's a short  
19 opinion. It's only one page.

20 A. Well, again, we have looked at --  
21 well, I have just explained them here in the  
22 direct and I have explained the timeframe and the  
23 costs that are associated in order to get into  
24 compliance. So they are pretty self-evident.

1 Q. Well, Mr. McClure, I wouldn't be  
2 asking the same question five times if they were  
3 self-evident.

4 Show me in here where your  
5 opinion recovers economic benefit of  
6 non-compliance that was found -- the violation was  
7 found -- your opinion doesn't recover any economic  
8 benefit for those violations that were found?

9 MR. HARSCH: Is that a question or a  
10 statement?

11 BY MR. GRANT:

12 Q. It's a question.

13 A. Well, as I have outlined in the  
14 various --

15 MR. GRANT: Can you read -- I'm  
16 sorry. Mr. Halloran. He is avoiding a very  
17 simple question.

18 HEARING OFFICER HALLORAN: What do  
19 you want me to do?

20 MR. GRANT: Could you ask the court  
21 reporter to read the question back?

22 HEARING OFFICER HALLORAN: Kari,  
23 could you reread the last question for him,  
24 please?

1 (Whereupon, the record was read  
2 as requested.)

3 BY THE WITNESS:

4 A. Can you restate your question?

5 BY MR. GRANT:

6 Q. And so is that --

7 A. And I think I have answered it.

8 Q. You haven't answered the question.

9 Now, it's true that your opinion  
10 does not recover any economic benefit, whatsoever,  
11 for violating Section 218.401 regulations by  
12 operating press number 4 from March 15th, 1995,  
13 through December of 2002. It doesn't recover any  
14 of it, does it?

15 A. The economic benefit calculations  
16 that I provided both here and previous -- in  
17 previous testimony provide a number of assumptions  
18 and variables that outline the economic benefit  
19 under the circumstances of Packaging Personified's  
20 history.

21 Q. All right. I will ask it again.

22 A. So the numbers have been included --

23 Q. Define them for me.

24 A. -- here and here and in my prior

1 report..

2 Q. I want the number in dollars that  
3 you found for economic benefit for violations  
4 related to press 4 operating without control from  
5 March 15th, 1995 through December of 2002.

6 A. And depending upon the control  
7 approach that's taken --

8 Q. No. This one right here.

9 A. -- the amounts are included, and  
10 those are provided here.

11 Q. No. Okay. Please find the amount  
12 for me, and tell me what the dollar amount is.

13 A. The dollar --

14 HEARING OFFICER HALLORAN: Which  
15 exhibit are we talking about, Mr. Grant?

16 MR. GRANT: I have got 64 and then  
17 Exhibit 20, but it's the same thing.

18 HEARING OFFICER HALLORAN: I'm  
19 sorry. Proceed.

20 BY MR. GRANT:

21 Q. Where is the number?

22 A. The number on Exhibit 64 is laid out  
23 in the --

24 Q. Mr. McClure, if you didn't include



1 that number, I want you to say I did not include a  
2 number for violations found by the Board for that  
3 operation. If you did include a number, I would  
4 like to have you tell me what it was.

5 A. I'm sorry. I'm not understanding  
6 what you are missing about my explanation. I  
7 can't --

8 Q. I am speaking English I know that.

9 HEARING OFFICER HALLORAN: Where are  
10 we going to go with this?

11 MR. GRANT: This testimony is  
12 nonresponsive.

13 HEARING OFFICER HALLORAN: You know,  
14 I think the Board can glean from the record his  
15 testimony and whether he answered the questions or  
16 not.

17 BY MR. GRANT:

18 Q. So there were a number of violations  
19 found by the Board that are not included in here.  
20 This is -- this opinion just deals with VOM and  
21 controlling VOM and all that sort of stuff. So  
22 the opinion that you have in front of you -- well,  
23 let me just say first, the Board found that --

24 MR. HARSCH: Are you making a

1 statement or asking a question?

2 BY MR. GRANT:

3 Q. The Board found that Packaging  
4 violated the Environmental Protection Act by  
5 failing to obtain a CAAPP permit. Your opinion  
6 does not recover any economic benefit related to  
7 Packaging's failure to obtain a CAAPP permit on a  
8 timely basis, correct?

9 MR. HARSCH: Mr. Hearing Officer, I  
10 am going to object to that question, because it's  
11 beyond the scope of what the Board sent us back to  
12 hearing on. And we had nothing to do with  
13 recovery of an economic benefit for not obtaining  
14 a CAAPP permit. I don't see any of that in the  
15 Board's order, nor do I see any economic benefit  
16 claim being put forth by the State in the first  
17 hearing that we had for failure to obtain a CAAPP  
18 permit.

19 HEARING OFFICER HALLORAN:

20 Mr. Grant?

21 MR. GRANT: This is -- what this  
22 is -- this questioning is to find out what he  
23 considered and what he didn't. The violations  
24 were found. This is his economic benefit model

1 for the total economic benefit of the case, and if  
2 he didn't consider it, say you didn't consider it.  
3 I just considered operating press 4 or a  
4 hypothetical non-violation of press 4.

5 HEARING OFFICER HALLORAN:

6 Mr. Harsch, I respectfully agree with the State.  
7 So the objection over ruled.

8 BY MR. GRANT:

9 Q. I think there is a question pending  
10 regarding the CAAPP permit. The violation for  
11 failure to obtain a CAAPP permit on a timely  
12 basis, your opinion does not consider that  
13 violation at all, does it?

14 A. The costs for that CAAPP permit are  
15 not included in here or an assumption --

16 Q. Your opinion -- nothing in your  
17 opinion recovers economic benefit for failure to  
18 get a CAAPP permit?

19 A. That's not included in the  
20 assumptions that are in these models.

21 Q. I am talking about an opinion and  
22 not the models.

23 A. My opinions are stated here in these  
24 models based upon the assumptions that I have

1 included.

2 Q. Okay. Let me just state for the  
3 purpose of everybody here, we have a failure to  
4 obtain operating permits. We have a failure to  
5 obtain construction permits. We have a violation  
6 of permit conditions and we have a failure to  
7 retain records. I am sure I am forgetting  
8 something. And we have -- and then we have the  
9 economic benefit based on not -- or failure to  
10 control volatile organic material. These are all  
11 violations. I know what the Board sent us to  
12 hearing for.

13 They sent us to hearing on let's  
14 pretend that press 4 didn't operate and not  
15 consider those for lowest cost alternative.  
16 This -- this is a preliminary question. This  
17 doesn't include -- nothing in this \$3,000 economic  
18 benefit includes anything for those violations.  
19 The violations were found, and he is evading  
20 answering a very simple question.

21 HEARING OFFICER HALLORAN: Well, the  
22 Board can decide that, and I will look into it.  
23 Mr. Harsch?

24 MR. HARSCH: In response to that?

1 HEARING OFFICER HALLORAN: Yes.

2 MR. HARSCH: I believe the Pollution  
3 Control Board can find these were violations that  
4 imposed a significant civil penalty that's not at  
5 issue today.

6 In addition, I don't believe  
7 that there has been any claim by the State or any  
8 evidence put forth so that the -- there is concern  
9 over imposition of an economic benefit portion of  
10 a penalty beyond the civil penalty that was  
11 imposed by the Board for the permit conditions or  
12 not submitting a permit application on time, et  
13 cetera, et cetera, in large part because the  
14 company did subsequently apply for those permits  
15 and obtained the permits.

16 The witness has testified to his  
17 conclusions and the inputs and the conclusions  
18 based on those regarding the economic benefit  
19 attributable -- the lowest cost economic benefit  
20 attributable if Packaging is able to show that it  
21 could have transferred all of the production from  
22 press 4 to press 5 and demonstrate compliance with  
23 the regulations through conducting a formal stack  
24 test. That's what was remanded back here, and

1 that's what we are here today for.

2 HEARING OFFICER HALLORAN: All  
3 right. You know, I am going to leave it in the  
4 competent hands of the five boards members. I  
5 think, Mr. Grant, you have asked the question  
6 enough, and I think the Board can take a look and  
7 figure out if he answered or he didn't answer.

8 MR. GRANT: I agree. It was -- I  
9 thought this would take 30 seconds, but we have  
10 got a paid expert witness who refuses to answer  
11 direct questions. At least that's in the record.

12 MR. HARSCH: Mr. Hearing Officer, I  
13 really object to the characterization, and you  
14 have already --

15 HEARING OFFICER HALLORAN: Yeah. I  
16 already ruled, Mr. Grant.

17 MR. GRANT: It's --

18 HEARING OFFICER HALLORAN: Mr.  
19 Grant, I was still talking. I know it's getting  
20 late in the day, but people are talking over me,  
21 and it started around 1:00, and I am not really  
22 happy about it. So if we could just move on.

23 BY MR. GRANT:

24 Q. Yeah, I will.

1                   Mr. McClure, all the  
2 information, all the assumptions in this letter I  
3 am dealing with in Exhibit 64 were provided to you  
4 by the counsel for Packaging Personified, correct?

5           A.       Yes, on the underlying invoice that  
6 came from the company.

7           Q.       Okay. You don't have any personal  
8 knowledge about the cost of the total temporary  
9 enclosure or permanent total enclosure, correct?

10          A.       Those estimates are provided to me.

11          Q.       You have no personal knowledge about  
12 the hours of operation of presses 4 and 5 between  
13 1995 and 2002; isn't that correct?

14          A.       What do you mean by personal  
15 knowledge?

16          Q.       Yes, personal knowledge.

17          A.       Meaning -- how do you describe that?  
18 I'm sorry.

19          Q.       I personally know. I wasn't told.

20          A.       Meaning, I was -- I was not --

21          Q.       Well, how do you describe personal  
22 knowledge?

23          A.       It's your question. I'm sorry. Go  
24 ahead.

1 Q. Well, what do I mean by personal  
2 knowledge?

3 A. Yes.

4 Q. How do you define personal  
5 knowledge?

6 A. I assume you mean was I at Packaging  
7 Personified in 1995?

8 Q. If I say this is May, do I have to  
9 explain that?

10 A. I was not. I'll finish my answer,  
11 if that's all right.

12 THE COURT REPORTER: Excuse me.

13 HEARING OFFICER HALLORAN: You know  
14 what? Kari only has two ears and she can't type  
15 that fast. Mr. Grant, in the last few minutes you  
16 have been talking over the witness. Speak to me  
17 if you want to speak to have the witness stop.

18 MR. GRANT: I'm sorry.

19 HEARING OFFICER HALLORAN: All  
20 right. You may continue.

21 BY THE WITNESS:

22 A. I was not personally at Packaging  
23 Personified in that time period.

24 BY MR. GRANT:



1 Q. Have you ever been to Packaging  
2 Personified?

3 A. No.

4 MR. GRANT: For the record, I am  
5 going to move to strike his testimony as  
6 nonresponsive.

7 HEARING OFFICER HALLORAN: Denied.  
8 Mr. Harsch?

9 MR. HARSCH: I'm sorry. I didn't  
10 completely hear what he was --

11 MR. GRANT: Move to strike his  
12 testimony as nonresponsive.

13 HEARING OFFICER HALLORAN: I'm  
14 sorry. Mr. Grant, can you speak up?

15 MR. GRANT: I think I am through  
16 talking for the day, because the next witness is  
17 Ms. Sangha's. So I apologize for getting  
18 flustered.

19 HEARING OFFICER HALLORAN: So noted.  
20 Mr. Harsch?

21 MR. HARSCH: I believe the witness  
22 has been responsive. He has explained what his  
23 opinion was based on. He pointed out to Mr. Grant  
24 where his assumptions were and how he came up with

1 his calculation. I believe he has been very  
2 responsive. It may not be the answer Mr. Grant  
3 wants, but --

4 HEARING OFFICER HALLORAN: Okay. He  
5 moved to strike. I denied it, and now you are --

6 MR. HARSCH: I did not hear you.  
7 I'm sorry. I did not hear you deny his motion.

8 HEARING OFFICER HALLORAN: Yes, I  
9 did.

10 MR. HARSCH: I thought you were  
11 asking me to respond.

12 HEARING OFFICER HALLORAN: No. You  
13 stated earlier that you think he is being  
14 responsive and I said the Board will take a look  
15 at the record and, you know, see whether or not  
16 that he has answered or not.

17 MR. HARSCH: I believed he had made  
18 a new motion and you were asking me to respond.

19 HEARING OFFICER HALLORAN: No.  
20 Well, number one, I have never granted a motion to  
21 strike so -- and I am not sure I am allowed to,  
22 but in any event, so where are we now?

23 REDIRECT EXAMINATION

24 BY MR. HARSCH:

1 Q. I have a couple of short follow-up  
2 questions.

3 Mr. McClure, under the economic  
4 benefit calculation, the BEN policy manual that  
5 USEPA has on guidance, you are familiar with that?

6 A. Yes.

7 Q. You went into it in great detail in  
8 your prior testimony?

9 A. Yes, we did.

10 Q. You have continued to remain current  
11 with respect to developments that have occurred  
12 and decisions rendered, et cetera?

13 A. Yes, and I continue to work in that  
14 area.

15 Q. This is your business, providing  
16 these kinds of opinions?

17 A. That's correct.

18 Q. Is there any specific -- is there a  
19 difference between the imposition of a penalty for  
20 the violation and the determination of an economic  
21 benefit penalty?

22 A. Well, I believe that the way the BEN  
23 methodology describes it as the distinction  
24 between an economic benefit and a gravity or other

1 component. And they make a specific delineation  
2 between the two, and it's clear that the economic  
3 benefit component covers specifically those -- the  
4 benefit or detriment, perhaps, that the company  
5 incurred during its -- or may have experienced  
6 during its period of violation subject to a  
7 variety of variables that would be input into a  
8 model. And again, that's separate and distinct  
9 from what a court or a Board might impose for  
10 gravity.

11 In the economic benefit world,  
12 you look at a series of assumptions that go into a  
13 model and the results that come out, which may be  
14 positive or negative, depending upon the specific  
15 attributes of the circumstance.

16 Q. And is it your understanding that  
17 the Pollution Control Board entered a penalty for  
18 the violations that it found that would be the  
19 equivalent of a gravity-based penalty?

20 A. That's what I understood from  
21 reading their order.

22 Q. And what we are here to talk about  
23 today do you understand to be the appropriate  
24 economic benefit, lowest cost penalty assessment?

1           A.       That's correct. More specifically,  
2       yes.

3           Q.       Is there a requirement anywhere in  
4       the guidance that you are aware of from USEPA, the  
5       BEN model, that an economic benefit penalty always  
6       has to be assessed?

7           A.       No. I mean, and even if that  
8       requirement is to be evaluated, the results -- you  
9       may find that the results are negative, because  
10      even the methodology itself provides for that fact  
11      that there may be some other foregone benefits  
12      that the company may have enjoyed by installing a  
13      compliance system that they lost out on. So you  
14      have to just look at what the numbers tell you and  
15      what the model concludes.

16          Q.       And in terms of violations, for  
17      example, of failure to obtain a permit, if the  
18      company then subsequently applies for a permit,  
19      submits the cost of submitting the application,  
20      having it prepared, et cetera, then in the  
21      economic benefit calculation world it would be  
22      simply that they have spent the money. It would  
23      be just a value of the deferment?

24          A.       That's correct. If you -- for any

1 specific cost that it's determined that you may  
2 have achieved an economic benefit, you can look at  
3 that cost and determine whether it should have  
4 been incurred, for example, at an earlier time,  
5 and if it's simply a cost that should have been  
6 incurred at an earlier time, you enjoy the time  
7 value of those dollars, and you can input those  
8 variables and get that result.

9 MR. HARSCH: No further questions.

10 HEARING OFFICER HALLORAN:

11 Mr. Grant?

12 RECROSS-EXAMINATION

13 BY MR. GRANT:

14 Q. Mr. McClure, I didn't get your  
15 compensation. Could you describe your  
16 compensation for your work on this case?

17 A. I have an hourly rate of \$450 an  
18 hour.

19 Q. And can you tell me approximately  
20 what your total compensation has been on this --  
21 let's take it after the last hearing, so just from  
22 the motion to reconsider on.

23 A. I have -- I would estimate I have  
24 put in about 20, 25 hours, maybe, in the last --

1 since September of 2011, I believe. I believe  
2 that's the timeframe there we have had some  
3 continued work.

4 MR. GRANT: That's it.

5 HEARING OFFICER HALLORAN: Anything  
6 from Mr. Harsch?

7 MR. HARSCH: No.

8 HEARING OFFICER HALLORAN: You may  
9 step down, Mr. McClure. Thank you.

10 Mr. Harsch are you going to rest  
11 now or --

12 MR. HARSCH: I have no further  
13 witnesses on direct.

14 HEARING OFFICER HALLORAN:  
15 Mr. Harsch, I am looking at Respondent's  
16 Exhibit 61 you didn't move it into evidence. Did  
17 you intend to?

18 MR. HARSCH: I thought it was moved  
19 into evidence.

20 HEARING OFFICER HALLORAN: Yeah, I  
21 had this one out. It's the -- do you have it in  
22 front of you, State?

23 MS. SANGHA: It has no title, but  
24 yes.

1 HEARING OFFICER HALLORAN: Okay.

2 Yeah, I am going to have to look into the record,  
3 but you have it in front of you. Do you have an  
4 objection for it to be moved into evidence?

5 MS. SANGHA: We were considering,  
6 but I guess we won't object. We have never seen  
7 this before a couple days ago, but no objection.

8 HEARING OFFICER HALLORAN: It's  
9 admitted.

10 (Whereupon, RESPONDENT'S Exhibit  
11 No. 61 was admitted into  
12 evidence.)

13 HEARING OFFICER HALLORAN: And also,  
14 you may want to move it later when the witness  
15 comes up, State, but Complainant's Exhibit 22, I  
16 had that here, and it wasn't moved, the May, 1st  
17 of 2003 letter.

18 MR. GRANT: We would like to move it  
19 into evidence.

20 HEARING OFFICER HALLORAN:  
21 Mr. Harsch, any objection?

22 MR. HARSCH: No.

23 HEARING OFFICER HALLORAN: Okay.  
24 Complainant's Exhibit 22 is admitted.



1 (Whereupon, COMPLAINANT'S  
2 Exhibit No. 22 was admitted  
3 into evidence.)

4 HEARING OFFICER HALLORAN: All  
5 right. State, you are on.

6 MS. SANGHA: I would like to call  
7 Kevin Mattison.

8 HEARING OFFICER HALLORAN: Okay.  
9 Mr. Mattison, would you raise your right hand and  
10 Kari will swear you in.

11 (Whereupon, the witness was duly  
12 sworn.)

13 KEVIN MATTISON,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SANGHA:

18 Q. Could you please state and spell  
19 your name for the record?

20 A. Kevin Mattison, M-A-T-T-I-S-O-N.

21 Q. And where are you employed,  
22 Mr. Mattison?

23 A. The Illinois Environmental  
24 Protection Agency.

1 Q. And how long have you been employed  
2 by the Illinois EPA?

3 A. Since 1993.

4 Q. And what is your educational  
5 background?

6 A. I attended the University of  
7 Illinois and received a degree in -- bachelor of  
8 science in engineering.

9 Q. And what is your current position  
10 with the agency?

11 A. I am an environmental protection  
12 specialist 4.

13 Q. Can you describe your job duties as  
14 an environmental protection specialist 4?

15 A. As an environmental protection  
16 specialist 4, I am involved in ensuring that the  
17 emission testing done in the State of Illinois as  
18 well as continuous emission monitoring done in  
19 Illinois is done properly and correctly.

20 Q. And could you describe for us what  
21 emissions testing is in general terms?

22 A. In general terms, emission testing  
23 is evaluating emissions out of the stack, in most  
24 cases regulated pollutants, whether it be SO<sub>2</sub>,

1 nitrogen oxide, volatile organic material in this  
2 case.

3 Q. And is overseeing emissions testing  
4 in Illinois your primary job duty?

5 A. Yes, it is.

6 Q. And describe what's involved in  
7 overseeing emissions testing.

8 A. The first thing we do is we get  
9 notified of an emission test and with that  
10 notification comes a protocol, an emission test  
11 plan. We evaluate that plan to ensure that the  
12 rules and regulations are being followed and the  
13 correct methodologies are being employed to obtain  
14 valid data.

15 Q. And does that also involve attending  
16 the stack testing while it's occurring?

17 A. Yes. It also entails witnessing  
18 testing. Obviously, with budgetary constraints  
19 we as the State of Illinois and myself are unable  
20 to attend all of those and then also after the  
21 test is done, a final report is submitted, and we  
22 then -- or I evaluate the validity of that test  
23 report.

24 Q. And how long have you been doing

1 this particular job for the agency?

2 A. Ever since I started with the agency  
3 in 1993.

4 Q. And have you been relied upon by  
5 other government agencies in this capacity?

6 A. Yes, I have. USEPA Region 5  
7 consistently calls upon me to assist them with  
8 their testing questions.

9 Q. And are you being paid anything  
10 beyond your normal salary for your attendance here  
11 today?

12 A. No, I am not.

13 Q. Are you familiar with the subject  
14 matter of this case?

15 A. Yes, I am.

16 Q. And are you familiar with the  
17 informal stack test that was conducted on press 5  
18 at the Packaging Personified facility that's at  
19 issue in this case?

20 A. Yes.

21 Q. I would like to direct your  
22 attention to an exhibit that's already in  
23 evidence. It's Complainant's Exhibit 8 from the  
24 prior hearing. You have a book in front of you.

1 It should be tabbed.

2 A. Exhibit 8?

3 Q. Complainant's Exhibit 8.

4 A. March 31st, 2003?

5 Q. That's correct.

6 A. Yes.

7 Q. Have you seen this document before?

8 A. Yes, I have.

9 Q. Can you describe for us what it is?

10 A. This is the summary of the informal  
11 testing done by Mr. Trzupek.

12 Q. And if you will turn to page 2, is  
13 that you that's cc'd on the test results?

14 A. Yes, it is.

15 Q. And just to be clear, the agency  
16 didn't receive any of the test protocol prior to  
17 the conducting of this informal test?

18 A. No, we did not.

19 Q. Okay. And you didn't receive any  
20 other results or documentation other than what we  
21 see right here?

22 A. That is correct. This is all we  
23 have.

24 Q. But you have had the opportunity to

1 review this test in detail?

2 A. Yes, I have.

3 Q. And have you reviewed Rich Trzupek's  
4 testimony?

5 A. Yes, I have.

6 Q. And the other documents in evidence?

7 A. Correct.

8 Q. Based on your review of this  
9 Complainant's Exhibit 8, the informal test  
10 results, as well as Trzupek's testimony regarding  
11 this informal test, what is your opinion as to its  
12 reliability for determining whether or not the  
13 recirculating tunnel dryer was acting as a control  
14 device on press 5?

15 A. Based upon the information  
16 presented, the date is unreliable and not  
17 statistically valid.

18 Q. And can I direct you to what's  
19 marked as Complainant's Exhibit 15, which is  
20 unartfully titled as Complainant's Exhibit 15?

21 A. Yes.

22 Q. Can you describe for us what this  
23 document is?

24 A. This is a summary of my evaluation

1 of that informal test.

2 Q. Thank you, Mr. Mattison. I am going  
3 to ask you some questions now, and we will just go  
4 through this point by point.

5 So if I could direct your  
6 attention to subpoint A. If you could explain how  
7 subpoint A supports your general opinion that the  
8 test was not reliable and the results were not  
9 statistically valid?

10 A. Yes. The -- the test that was  
11 performed is an engineering test as indicated by  
12 Mr. Trzupsek. It is just that. It's a quick and  
13 dirty way of looking at potentially what's there.  
14 When we are documenting, we are determining  
15 compliance with the regulations, the rules and  
16 regulations are very clear, as well as this  
17 methodology, and we need a minimum of three runs  
18 to do a statistical analysis of the data and in  
19 accordance with Document 035 to determine whether  
20 or not that data is statistically in the same  
21 ballpark of one another.

22 Without that, we have a picture  
23 of a few data points to determine compliance of  
24 that system. We can't even run a statistical

1 analysis of it.

2 Q. And how does having three runs help  
3 you to get data --

4 A. Well, with one run, and an  
5 abbreviated run at that, you don't know whether or  
6 not that is going to be repeatable. Now, if you  
7 do one run, that's the only thing you have to look  
8 at. If you do two runs, you know, there may be  
9 two different numbers and you average them out,  
10 and you -- then you can apply a statistical  
11 analysis of that data.

12 Q. And is there ever an occasion where  
13 a company would be required to do more than three  
14 runs?

15 A. In the realm of capture efficiency  
16 testing, when a facility chooses to use  
17 alternative capture test techniques, you -- one  
18 would have to demonstrate compliance with the data  
19 quality objective standard. If you are an ERMS  
20 participant or if the data indicates potential  
21 non-compliance, you would have to generate enough  
22 data to make sure it meets the data quality  
23 objective before we would enter into a  
24 non-compliant arrangement with violation notices.



1           Q.       Okay.  And if you could turn your  
2           attention to subpoint B, and please describe for  
3           us how the comments that you have made here  
4           support your general opinion about the  
5           unreliability of the test and its results?

6           A.       As Mr. Trzupek pointed out, I had to  
7           make some assumptions.  There was only three pages  
8           submitted to the agency.  A lack of data prevents  
9           me from making anything else other than  
10          assumptions of this data.  When a formal stack  
11          test comes in, we have a lot of data.  We have the  
12          actual raw data sheets, the exact location of  
13          where the testing was done, the actual organic  
14          concentration, the FID data points, the  
15          calibration of that information, all that's put  
16          into the test report to validate that data.

17                   All we have here is a three-page  
18          summary of what was done, but with no supporting  
19          documentation.  So with point B, we had to make  
20          that assumption of that was 40 pounds an hour.  
21          Was it really 40 pounds an hour?  The regulations  
22          very clearly indicate that that has to be an exact  
23          number, especially when we are doing liquid to gas  
24          mass balance, because if those numbers are off,

1 our calculations are off. Our assumptions are  
2 off, as Mr. Trzupsek pointed out.

3 So when it comes down to this,  
4 there is no information as to what the actual  
5 inlet number is -- input number is other than  
6 40 pounds an hour of VOM. Was it really 41? Was  
7 it 35? Was it 42 and a half? I don't know.

8 Q. And was there any information in  
9 evidence that caused you to question whether or  
10 not 40 pounds an hour of VOM was an accurate  
11 number?

12 A. Based upon the other data presented  
13 today, as well as in other depositions, there was  
14 a maximum ink usage rate of 20 pounds per hour in  
15 there, and I don't even know if they were  
16 operating at 100 percent capacity that day of the  
17 test.

18 Q. And just to be clear, you are  
19 referencing an exhibit that you reviewed, it's  
20 Complainant's Exhibit 13 and it's already in  
21 evidence. It's a letter dated May 2nd, 2003, and  
22 I think you are referencing some of the  
23 attachments to that letter. Is that the pounds  
24 per hour information?

1           A.       That is correct.

2                   HEARING OFFICER HALLORAN:

3       Ms. Sangha, could you speak up? I've got the  
4       machine going on in the back here.

5                   MS. SANGHA: No problem. Please let  
6       me know if you can't hear me.

7       BY THE WITNESS:

8           A.       Specifically, Attachment D, as in  
9       David, has a chart in here of number 5 -- press  
10      number 5 before control, ink usage, maximum  
11      20 pounds per hour, and average of 16.

12      BY MS. SANGHA:

13           Q.       Thank you, Mr. Mattison.

14                   Now, if you can turn the page,  
15      and we will discuss your subpoint C. And please  
16      describe to us how this portion of your opinion  
17      supports your overall conclusion about the  
18      unreliability of the test and the data results?

19           A.       My point C references the issue with  
20      regards to the input data, inlet data, where it  
21      was measured. We have several different things,  
22      as Mr. Trzupsek pointed out. We have the  
23      discretion about the VOM in comparison with the as  
24      propane versus as organic compounds, the

1 measurement of apples and apples. That's very  
2 true.

3 Rules and regulations require us  
4 to bring that back into measuring apples and  
5 apples. It also requires us to measure that on a  
6 dry standard cubic feet basis. That's one point  
7 there.

8 The other point that -- why  
9 we -- I make the statement, it grossly  
10 misrepresents the efficiency is -- as we all  
11 pointed out today, this is a recirculating oven.  
12 And in order to get an accurate determination of  
13 capture efficiency, you take the -- when you are  
14 dealing with liquid to gas mass balance, you take  
15 the amount of potential organics that are capable  
16 of being emitted, and then you are trying to look  
17 at how much did the capture system or oven  
18 collect? And in this case, Mr. Trzupsek measured  
19 somewhere in that oven the flow rate, and I think  
20 I pointed out that it was like two and a half  
21 times higher than what was going out, and so the  
22 statement was, well, that's a recirculating flow,  
23 so, of course, it's going to be higher.

24 Well, when you have got

1 recirculating flow and you have got flow coming  
2 in, the actual organics being captured is not the  
3 recirculating flow. It's what flow comes in, and  
4 then on top of that you've got recirculating  
5 organic material. So you have got -- it goes  
6 through the system once. You count it on the FID  
7 at the inlet. It goes through -- it may get  
8 reduced somewhat, as pointed out earlier today,  
9 but you still have some left over. It gets  
10 recounted again by that FID. It's an additive  
11 effect.

12                   So now we have inflated the  
13 amount of organics that we have indicated by this  
14 estimated test of what we have captured, and I  
15 don't see how we can have any science behind that  
16 that's a valid number.

17           Q.       And that's because you are  
18 overestimating the total amount of volatile  
19 organic materials that had a potential of  
20 recapture?

21           A.       That's correct.

22           Q.       And could you point out for us in  
23 the Complainant's Exhibit 8, which is informal  
24 test results, where those numbers are that you are

1 discussing in terms of the differential between  
2 one number and the other?

3 A. It's on page 3 of his report on the  
4 very bottom where it says DC -- DSCFM, dry  
5 standard cubic feet per minute. Column 1 is the  
6 inlet, 2,417 and dry standard cubic feet per  
7 minute. The second column over, same row, dry  
8 standard cubic feet per minute at the outlet, 818.

9 Q. And is it typical to see a spread  
10 like this in terms of flow at the inlet and flow  
11 at the exhaust?

12 A. Not of a control system, no.

13 Q. Mr. Mattison, I wanted to ask --  
14 back up a little bit and ask you again about, I  
15 think, subpoint C and again, I'm not an expert on  
16 this, as related to the issue of response factor,  
17 which is something that's been discussed today,  
18 that you would need to create a response factor.  
19 Could you explain that a little bit more, or am I  
20 incorrect in assuming that that's connected to  
21 subpoint C?

22 A. No. That is correct. In Mr.  
23 Trzupek's testimony he did a good job of  
24 explaining what a response factor is and how that

1 does adjust the concentrations down. It wasn't  
2 done here, and therefore, it invalidates the data  
3 to be used for compliance purposes of capture  
4 efficiency testing in regards to the rules and  
5 regulations.

6 Q. And the response factor would change  
7 depending upon the level --

8 THE COURT REPORTER: I'm sorry. I  
9 can't hear you.

10 BY MS. SANGHA:

11 Q. And is it correct that the response  
12 factor would change depending on which specific  
13 ink was used and what the volatile organic  
14 material percent was for that ink?

15 A. It would change based upon the  
16 organic compounds in that ink, yes.

17 Q. And there is a great deal of  
18 variability in the organic -- level of organic  
19 compounds in various inks?

20 A. According to the chart in  
21 Exhibit 13, Appendix D, there is a quite large  
22 variability of the organic compounds in the  
23 different types of inks that are there. So, yes,  
24 that would greatly affect the input value of the

1 organic compounds.

2 Q. And we don't have information about  
3 the inks that were used in this informal test,  
4 correct?

5 A. No. I do not have any information.

6 Q. So if it's true that the ink  
7 suggested by Trzupek earlier today -- I think he  
8 referenced that -- if it was acetate, this number  
9 might be more accurate, but is it possible if  
10 there was a different ink the number could be --  
11 those assumptions would no longer apply?

12 A. Those generic assumptions would not  
13 apply. Again, we would have to know the exact  
14 ink, the exact organics that were used to make an  
15 accurate determination of the true input value of  
16 the organics being used at the time of the test.

17 Q. So it affects the reliability of the  
18 test results?

19 A. Absolutely.

20 Q. Mr. Mattison, is there any other  
21 additional comment that you would like to make  
22 about your opinions that you have set forth in  
23 subpoint D? We got into that just a little bit in  
24 the testimony a minute ago.



1           A.       You are right. You know, I think I  
2       may have blurred C, D and potentially E all  
3       together, but with regards to D, again, you know,  
4       if we have an improper or inaccurate amount of  
5       organic material going to the control system, now  
6       we have inflated our inlet number, and to  
7       determine the destruction efficiency, we take our  
8       inlet minus our outlet divided by our inlet and  
9       then we times that by 100 to come up with our  
10      destruction efficiency.

11                        So if we inflate by improperly  
12      documenting what the true inlet organic material  
13      was going to the control, we would show a higher  
14      destruction efficiency than what is really there.

15           Q.       So having a proper inlet point is a  
16      very important part for the reliability of the  
17      data?

18           A.       Absolutely.

19           Q.       If we could turn to the next page,  
20      and you can describe for me the point that your  
21      are making in subpoint E and how that supports  
22      your overall conclusion about your opinions for  
23      the test.

24           A.       As we have heard today, the cost of

1 actually doing a test is actually probably  
2 insurmountable to the amount of cost that we have  
3 spent here just today alone. And there was a  
4 statement in there that Mr. Trzupsek believed that  
5 the measurement of capture efficiency was  
6 expensive, time-consuming, and neither he, nor  
7 Packaging Personified finds that investment in  
8 time and in cost justified.

9           You know, unfortunately it does  
10 cost money to do business, and it does cost money  
11 to document and prove compliance so that we can  
12 ensure that the environment does not see a degrade  
13 in the standards.

14           Q.       And if we could turn your attention  
15 now to subpoint F, and describe for me what point  
16 you are making there and how it affects your  
17 opinion about the reliability of the data.

18           A.       The point I am making here is that  
19 in Mr. Trzupsek's expert report in 2009 he makes a  
20 statement that the VOM destruction efficiency of  
21 the drying oven exceeds 99 percent. However, in  
22 his own report, engineering report and informal  
23 test of December 12, 2001, he only reports the  
24 destruction efficiency of 93.6 percent. I don't

1 see how over time without any additional formal  
2 testing did we increase it by 5.4 percent.

3 Q. So once you have run a test and you  
4 have a result, that's the result?

5 A. If you do a formal test that meets  
6 all the statistical calculations and you perform  
7 it in accordance with the rules and regulations to  
8 come up with a valid number, that number stays  
9 until proven otherwise by another stack test  
10 that's valid.

11 Q. And I have another question for you.  
12 Mr. Mattison, related to informal test, is there  
13 any information that you would normally have  
14 received -- and I think you referenced or noted  
15 this earlier -- that you would normally have  
16 received with an emissions test that you did not  
17 receive with this communication, and if you could  
18 comment on why that's important?

19 A. Well, in a formal test we would have  
20 received, as I indicated earlier, all the raw  
21 data. We would have been able to verify where the  
22 actual test was conducted at. We would have been  
23 able to verify that it did meet the method 1  
24 criteria. We would have been able to verify that

1 the calibrations of the FID were proper.

2 All we have is concentration of  
3 2000 PPM at the inlet and 380 PPM at the outlet.  
4 That's all I have. I have no supporting  
5 documentation of how that was derived or obtained  
6 by this report.

7 Q. And if you had that documentation,  
8 for example, and you just referenced the 2000 and  
9 380, is that something you would have gone to to  
10 check to be able to review and determine whether  
11 or not these numbers were accurate?

12 A. Yes. We would have been able to do  
13 that.

14 I would also like to point out  
15 on page 2 of that document, second paragraph, it  
16 indicates that the testing was conducted for  
17 approximately 30 minutes at each location. So an  
18 actual test was not an hour long, as indicated  
19 earlier in testimony.

20 Q. Thank you, Mr. Mattison.

21 Is there anything else that you  
22 would like to point out about your opinion or the  
23 informal test?

24 A. Informal testing has never been

1 used, to my knowledge, to document compliance for  
2 purposes of permitting, and informal testing like  
3 this is not valid or statistically valid to  
4 document compliance.

5 Q. So in your opinion, this test  
6 methodology used by Rich Trzuppek -- for the  
7 purposes of demonstrating compliance you would  
8 consider this a novel test methodology?

9 A. That is correct.

10 Q. And would you consider these  
11 informal test results to be an accurate estimate  
12 of capture and control on press 5?

13 A. I would not.

14 Q. Would you ever rely on these results  
15 at the agency as evidence of a facility within  
16 compliance of part 218 of the Board regulations?

17 A. No, I would not.

18 MS. SANGHA: I have no further  
19 questions.

20 HEARING OFFICER HALLORAN: Thank  
21 you, Ms. Sangha. Mr. Harsch?

22 CROSS-EXAMINATION

23 BY MR. HARSCH:

24 Q. What's your engineering degree in?

1           A.       Ceramic engineering, sir.

2           Q.       Have you ever personally performed a  
3 stack test?

4           A.       I have not personally performed a  
5 stack test. I have conducted a certification for  
6 USEPA Method 9.

7           Q.       I am familiar with what you do for a  
8 living as we have talked about earlier. But you  
9 personally have not performed a test?

10          A.       No.

11          Q.       Have you personally witnessed tests  
12 that have been performed previously by  
13 Mr. Trzupek?

14          A.       Yes, I have.

15          Q.       Okay. And how did you find those  
16 tests to be performed?

17          A.       That was many years ago.

18                   HEARING OFFICER HALLORAN:

19 Mr. Harsch, can you turn on your mike, please? I  
20 am having trouble hearing you. Sorry.

21 BY THE WITNESS:

22          A.       That was many years ago that I have  
23 actually witnessed Mr. Trzupek actually being the  
24 stack tester. I am going back 15, 20 years. I

1 don't have specific recollection as to the dates,  
2 times and sources.

3 BY MR. HARSCH:

4 Q. That was when you were just starting  
5 out observing stack tests, wasn't it?

6 A. Yes.

7 Q. Have you witnessed any stack tests  
8 that Mr. Trzupsek has oversaw or arranged for his  
9 clients now that he is no longer actually doing  
10 stack testing?

11 A. I am sure I have.

12 Q. Are you aware of any reason to  
13 question any of the -- of his -- of those stack  
14 tests that he has arranged for?

15 A. Have I had any questions about --

16 Q. Any reason to -- any knowledge or  
17 any reason to question any of the testing that he  
18 has done or overseen?

19 A. No. I mean, we view the data as it  
20 comes in.

21 Q. All of your criticisms that you have  
22 testified to at length here, I believe you have  
23 qualified as -- as not showing -- as not being --

24 A. Statistically --

1 Q. -- proper to show compliance -- to  
2 demonstrate compliance with the regulation?

3 A. That is correct.

4 Q. You were here when Mr. Trzupsek  
5 testified that that was not the purpose of the  
6 test?

7 A. That is correct, at the time. But  
8 it appears it is being used for that case now.

9 Q. Drawing your attention to  
10 Complainant's Exhibit 15. Did you draft this  
11 document?

12 A. I did not draft this exact piece of  
13 paper. This is a summary of what I provided.

14 Q. Were you asked to prepare an expert  
15 report in this case?

16 A. I don't believe I was asked to  
17 prepare an expert report.

18 Q. What document did you prepare in  
19 this case?

20 A. An evaluation of the informal stack  
21 test.

22 Q. Did the Attorney General's Office  
23 give you any information as to why they prepared a  
24 summary based on what you had given them and



1 introduced their summary into this instead of your  
2 report?

3 A. No.

4 Q. Had you seen this document before  
5 today?

6 A. Yes, I have.

7 Q. When was it provided to you?

8 A. I don't recall the exact timeframe  
9 it was provided to me.

10 Q. This year?

11 A. Yes.

12 Q. Last year?

13 A. It was probably after my deposition  
14 in November. I can't recall the exact date.

15 Q. Do you remember the date of your  
16 deposition?

17 A. No.

18 Q. Do you remember where it occurred?

19 A. No.

20 Q. Do you remember who took the  
21 deposition?

22 MS. SANGHA: I am going to object.

23 I think he said deposition. He meant to say his  
24 meeting within our office when we went through his

1 opinions about the test.

2 MR. GRANT: He hasn't been deposed.

3 MR. HARSCH: I'm sorry but I was --

4 MS. SANGHA: It's fair. It's fair.

5 He said deposition and if there had been one,  
6 that's something you would want to know. He has  
7 not been deposed. We had -- it probably felt like  
8 a deposition, as we grilled him about his thoughts  
9 and opinions and then had him provide to us  
10 something better than our scrawled notes. That's  
11 the time that he is referencing.

12 BY MR. HARSCH:

13 Q. You previously just testified about  
14 a deposition in this matter, correct?

15 A. Yes, I did. Obviously, I was  
16 incorrect.

17 Q. Do you know if the agency has relied  
18 upon Mr. Trzupsek's engineering estimate for  
19 purposes of calculating the cost of the ERMS  
20 emissions allowances?

21 A. I'm not aware of that personally.

22 Q. You were originally provided a copy  
23 of this engineering analysis, is that correct,  
24 when it was submitted to the State?

1           A.       Are you referring to the summary  
2 report?

3           Q.       Yes.

4           A.       Yes. I was originally given a copy  
5 of that. Obviously, I was cc'd on that, yes.

6           Q.       Do you recall when you first  
7 notified Mr. Trzupsek that you found it to be  
8 unacceptable?

9           A.       I said I was in receipt of it. I  
10 did not say I reviewed it at the time.

11          Q.       Did you ever notify Mr. Trzupsek that  
12 you found it to be unacceptable?

13          A.       I personally did not do that, no.

14          Q.       Did you ever communicate prior to  
15 whatever report you gave to the Attorney General's  
16 Office that you found this engineering stack test  
17 to be unacceptable?

18          A.       No, because it wasn't reviewed until  
19 that time.

20          Q.       So you have had this since  
21 March 31st, 2003?

22          A.       Sure.

23          Q.       And ten years later or nine years  
24 later you reviewed it?

1 HEARING OFFICER HALLORAN: I'm  
2 sorry. I didn't hear you, Mr. Harsch.

3 BY MR. HARSCH:

4 Q. Nine or ten years later you reviewed  
5 it?

6 A. There are many stack tests done in  
7 the State of Illinois. I am only one person. I  
8 can't get to them all in a timely fashion.

9 Q. Have you reviewed the stack tests --  
10 engineering stack tests prior to the last hearing  
11 in this matter?

12 A. Prior to when?

13 MR. GRANT: I don't think he knows  
14 when the hearing was. Why don't you give him a  
15 date?

16 MS. SANGHA: He wasn't involved.

17 BY THE WITNESS:

18 A. When I was here today you mentioned  
19 2009, but I was not involved in those hearings at  
20 all.

21 BY MR. HARSCH:

22 Q. You did not review it prior to the  
23 last hearing in 2009?

24 A. I was not aware of it at that time,

1 no.

2 MR. HARSCH: Mr. Hearing Officer, I  
3 am going to move to exclude Complainant's  
4 Exhibit 15. It was not prepared by the witness.  
5 He has prepared a report evidently that the  
6 Attorney General has provided summary of or  
7 something rather than the document in question  
8 that he prepared.

9 HEARING OFFICER HALLORAN:  
10 Mr. Grant?

11 MR. GRANT: It's sort of an  
12 interesting observation considering he used this  
13 exhibit in his examination of Mr. Trzupsek. As  
14 Mr. Harsch has known since November 15th of 2012,  
15 and as I have explained this to him on numerous  
16 occasions, these are our 213(f) expert witness  
17 disclosures. They were reviewed by Mr. Mattison  
18 before -- they were created from some rough things  
19 he gave us. They were reviewed by Mr. Mattison  
20 and corrected, and they were produced. Rather  
21 than ask him to take time out of his schedule to  
22 provide an expert witness report like a paid  
23 expert might, we prepared Exhibit 15 for use in  
24 hearing here and it's taken verbatim from the

1 213(f) disclosures.

2 HEARING OFFICER HALLORAN: Okay. I  
3 have noted both of your objections on the record,  
4 statements. I am going to allow it in over  
5 Mr. Harsch's objection as demonstrative evidence.  
6 I think it helps explain Mr. Mattison's verbal  
7 testimony. So it's admitted. Although, you know,  
8 actually the State hasn't even offered it yet,  
9 have they? I don't think so.

10 MR. GRANT: I don't know if we have  
11 or not. I know that they used it -- we -- yeah.  
12 It was one of the things we were going to get to,  
13 but we might as well now move it into evidence.

14 HEARING OFFICER HALLORAN:  
15 Complainant's No. 15 is admitted, demonstrative  
16 evidence.

17 All right. Mr. Harsch?  
18 (Whereupon, COMPLAINANT'S  
19 Exhibit No. 15 was admitted  
20 into evidence.)

21 MR. HARSCH: That concludes my  
22 cross-examination.

23 HEARING OFFICER HALLORAN: Thank  
24 you, sir. Ms. Sangha?

1 REDIRECT EXAMINATION

2 BY MS. SANGHA:

3 Q. Just a few questions.

4 Yes. Mr. Mattison. Mr. Harsch  
5 just pointed out this March 31st, 2003, letter.  
6 You didn't review this in 2003; is that correct?

7 A. That is correct.

8 Q. Is there any difference in your  
9 review now than there would have been in 2003  
10 other than additional years of experience in this  
11 field?

12 A. No. They would be the same.

13 Q. So your opinions and conclusions in  
14 2003 would have been the same as your opinions and  
15 conclusions today?

16 A. That is correct.

17 Q. And you have been in this specific  
18 field for 20 years; is that correct?

19 A. That is correct.

20 Q. How would you describe your level of  
21 knowledge regarding stack testing?

22 A. Thorough.

23 Q. And compliance -- formal  
24 demonstration of compliance and Part 218 aside,

1 just looking at the data and the test results  
2 here, you wouldn't find this as an accurate  
3 estimate of capture and control for any purposes?

4 A. No, I would not.

5 MS. SANGHA: Thank you. No further  
6 questions.

7 HEARING OFFICER HALLORAN: Thank  
8 you. Mr. Harsch?

9 MR. HARSCH: No further.

10 HEARING OFFICER HALLORAN: Thank  
11 you. You may step down, sir.

12 Ms. Sangha, any more witnesses?

13 MS. SANGHA: No. We rest our case.

14 HEARING OFFICER HALLORAN: You rest.

15 Mr. Harsch, any rebuttal?

16 MR. HARSCH: Yes. I will call

17 Mr. Trzupsek on rebuttal.

18 HEARING OFFICER HALLORAN:

19 Mr. Trzupsek, I remind you that you are still under  
20 oath.

21 THE WITNESS: Yes, sir.

22 RICHARD TRZUPEK,

23 re-called as a witness herein, was examined and

24 testified as follows:



DIRECT EXAMINATION

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BY MR. HARSCH:

Q. Mr. Trzupek, you have now had the benefit of listening to Mr. Mattison go through his testimony regarding what has been marked and accepted as Complainant's Exhibit 15. Let's go back through it again.

Have you got it open in front of you?

A. I do.

Q. First off, before we get there, were you ever provided any kind of comments prior to the hearings in this matter regarding your engineering test?

A. Not that I recall, no.

Q. Did you perform the engineering test for the purpose of demonstrating compliance?

A. No, sir.

Q. And in response to what's marked as A in this exhibit, I believe Mr. Mattison testified that -- regarding the statistical analysis issue. Do you agree with him?

A. I do not.

Q. And why?

1           A.       Well, the method 25(a), which is the  
2 method that measures the total hydrocarbon  
3 concentration, gives the person a real-time  
4 readout, a continuous readout of concentrations at  
5 a steady state. During a test of this type when  
6 we are doing some engineering work, we are looking  
7 to make sure that the press is running at a steady  
8 state, and then we see how steady the FID readout  
9 is, the response.

10                   And you can see very quickly and  
11 in this case, you know, within a matter of a few  
12 minutes how consistent those numbers are going to  
13 be. It's not one number that we are getting over  
14 that period. It is a continuous stream of data,  
15 and if that data is essentially a flatline, I can  
16 be very confident that that data is  
17 representative.

18           Q.       In this printing stack test, would  
19 the printing conditions remain the same?

20           A.       Yes.

21           Q.       So they would be printing the same  
22 product?

23           A.       That is correct. And that's what I  
24 directed Mr. Imburgia at the time, to make sure we

1 could get that type of nice, steady state  
2 condition.

3 Q. For engineering purposes, do you  
4 believe that the -- your method 25 was, in fact,  
5 reliable?

6 A. 25(a), and yes, I do.

7 Q. You heard Mr. Mattison's comments  
8 with respect to what's marked as paragraph B?

9 A. Yes.

10 Q. Do you agree with those comments?

11 A. I do not.

12 Q. And why?

13 A. Well, with respect to -- again, as I  
14 testified earlier today, ink usage is the smaller  
15 percentage of what is actually used in the  
16 flexographic printing. So, for instance, if  
17 the -- if they said that their matt's ink usage  
18 was 20 pounds, well, then the solvent usage that  
19 you add typically with flexo printing would be an  
20 additional 40 pounds, for a total of 60.

21 The ink usage -- the ink and  
22 solvent usage that I measured to come up with the  
23 40 pounds was accurate. I understand that the  
24 report is not in the format that Mr. Mattison is

1 used to reviewing, and I know he reviews a ton of  
2 reports, but in the end, when somebody is  
3 reporting usage data, you are relying on the --  
4 you are counting on the reliability and the  
5 integrity of the person who is doing that  
6 reporting.

7 40 pounds is what we measured  
8 and what I reported, and whether that 40 pounds  
9 was delineated in a three-page report or as part  
10 of a 200-page stack test report, the State  
11 ultimately is counting on the integrity, the  
12 honesty and the skill of the person who made those  
13 measurements to give accurate data.

14 Q. Is it normal that you would test at  
15 100 percent printing application?

16 A. That is always the big question of  
17 printing. We get different answers state to  
18 state. 100 percent coverage in printing would  
19 lead you to have a completely black sheet of  
20 substrate that would be -- that would be  
21 worthless.

22 Illinois typically, and to  
23 Kevin's credit, looks at printing as -- they look  
24 for -- I think the word he used is "maximum

1 typical." So what -- you know, coverage that gets  
2 close to what your maximum normal coverage would  
3 be, and that's when we did this particular test  
4 what I asked Joe to shoot for.

5 Q. And you heard the comments made with  
6 respect to the efficiency estimates in the rest of  
7 that paragraph?

8 A. Yes.

9 Q. And do you agree with them?

10 A. No, I don't. I mean, on two -- and  
11 I don't think this is in dispute anymore, and  
12 correct me if I'm wrong, but the statement which  
13 in reality represented the ink usage rate is just  
14 incorrect. The VOM usage rate is the VOM usage  
15 rate, which is a combination of solvent and the  
16 VOM contained in the ink. So because that is the  
17 actual VOM usage rate, then those capture  
18 efficiency estimates above 100 are incorrect  
19 conclusions.

20 Q. Any other reasons you disagree with  
21 how he testified with respect to B?

22 A. With respect to B, I guess the only  
23 other thing is the VOM content of the ink, the  
24 MSDS is a good indicator of VOM content of the

1 inks. Is it as exact as sending it out? It is  
2 not. Is the difference between what the MSDS says  
3 and a tested content significant for these  
4 purposes? I don't believe it is, as a chemist.  
5 The other statement, I guess, that was discussed  
6 between counsel and Mr. Mattison was, well, the  
7 inks vary widely.

8                   When we first started with  
9 Packaging, we submitted a list of everything that  
10 Packaging had, which I think is -- what I believe  
11 is what they were referring to, but in reality,  
12 the Sun inks that are used on the solvent presses  
13 are all extremely similar in composition, a  
14 mixture of alcohols and acetates and very  
15 consistent. And when we did that test, those were  
16 the types of inks that were because that's what  
17 they run on their solvent presses. And if you  
18 look at the Sun inks, you will see that  
19 compositions of each one is very similar to the  
20 other with small changes across the colors.

21           Q.       And that would affect the response  
22 factor?

23           A.       Correct. And that's why I can be  
24 confident about that the response factor would

1 have jumped the capture results even higher than  
2 we should have.

3 Q. And the comment with respect to the  
4 acetone, the acetone is used as a solvent and  
5 not --

6 A. It was acetate.

7 Q. Acetate. Excuse me.

8 A. Yeah. The -- they have a mix that  
9 they used as their solvent, and again, remember  
10 the solvent is used about two to one over the --  
11 with respect to the ink. So there is acetates  
12 contained in the ink, and then their dilution  
13 solvent, which makes up the majority of the VOM  
14 emissions are acetates that we know and which have  
15 known response factors.

16 Q. What about to respond --

17 HEARING OFFICER HALLORAN:

18 Mr. Harsch, can you speak up?

19 BY MR. HARSCH:

20 Q. Can you respond to -- are there any  
21 points you want to respond to on what was  
22 testified to with respect to paragraph C?

23 A. Again, we talked about it, you know,  
24 as we both said that response factor corrections

1 are appropriate. As a chemist, I know that the  
2 response factor correction would only increase the  
3 measured mass emission rate because of the types  
4 of compounds that are used and how FID responds to  
5 them.

6 Q. And is it also because they are  
7 consistent with respect to the standard ink  
8 composition?

9 A. Yes. That is correct as well.

10 Q. What about with respect -- do you  
11 have any other points on that one? If not, you  
12 can go to D.

13 A. Yeah. I have nothing further on C.  
14 On D --

15 Q. D as in dog?

16 A. D, as in dog. I believe  
17 Mr. Mattison said that he believed that the VOM  
18 concentrations would be building up and up in the  
19 recirculation loop, but this is not, in fact, what  
20 we see. We see a steady state condition, a  
21 flatline that I described. The measurement at the  
22 inlet point did not include the volume of gas  
23 going through the recirculation loop, which is why  
24 those volumes do not agree. You are only taking a



1 side stream off of that loop up through the stack.  
2 They basically set -- they have a tee damper that  
3 they set in order to do that, to set how much they  
4 were going to pull off.

5 And I guess the other thing  
6 would be, if you did, indeed, have a build-up of  
7 VOM as a result of recirculation, you would  
8 eventually hit the lower explosive limit and blow  
9 up your oven, and since press 5 is still in one  
10 piece, I am assuming that didn't happen.

11 Q. Do you believe that you, in fact,  
12 tested the points that would show the inlet  
13 concentration to the dryer and the exit  
14 concentration of the stack?

15 A. Yes, I do.

16 Q. And that would show, would it not,  
17 the amount of solvent that was emitted out of it  
18 potentially, plus versus what was destroyed by  
19 being recirculated?

20 A. Yes.

21 Q. He has taken issue with respect to  
22 your observations that it was under a negative  
23 pressure. Can you respond to that?

24 A. In two ways. One, the measurement

1 of static pressure in a system is about as simple  
2 as it gets. It's simply attaching some type of  
3 differential pressure gauge, a Magnehelic is most  
4 commonly used, and noting the deflection of the  
5 needle.

6                   Static pressures are extremely  
7 simple to measure, and we measure them all the  
8 time during stack tests, and that was done in this  
9 case, and as I observed earlier, if the oven was  
10 under positive pressure, and I have been in  
11 unbalanced press rooms before, we would -- you  
12 would be overwhelmed by the fumes, and that was  
13 not the case.

14           Q.       Do you agree with his conclusions  
15 that -- regarding the flow measurements showed  
16 that it was not being maintained -- making it  
17 impossible for it to be maintained under negative  
18 pressure?

19           A.       I do not.

20           Q.       Is it because he doesn't understand  
21 where you were measuring?

22           A.       That's my belief, yes.

23           Q.       Do you agree with the comments that  
24 you biased the destruction efficiency calculations

1 by inflating the inlet emissions rate to the  
2 control?

3 A. No, I do not.

4 Q. Why?

5 A. Because, again, we did not have any  
6 buildup. We did not have any increase in the  
7 inlet rate. We had a steady definable inlet rate  
8 that was consistent with the amount of ink that  
9 was used and the amount of solvent that was used.  
10 I believe those inlet numbers are reflective of  
11 what was going on in the press as was with the  
12 outlet numbers.

13 Q. The statements in E have nothing to  
14 do with your informal stack test, did they?

15 A. They do not.

16 Q. And do you have a response to the  
17 comments in statement F?

18 A. Yeah. That's incorrect on my part,  
19 that he is correct. I -- 99 percent I should not  
20 have put in my expert report. 93.6 is the correct  
21 number.

22 Q. In fact, you believe you have  
23 corrected that?

24 A. I thought I did, but perhaps I

1 didn't. This case has been going on for a while.

2 Q. Do you have any question that from a  
3 sound science standpoint that your engineering  
4 stack test was reliable?

5 A. I have no question, no.

6 Q. And based on that engineering stack  
7 test, does it remain your opinion that had a  
8 formal stack test been performed on press 5 it  
9 would have passed the regulatory requirements of  
10 90 percent destruction and 65 percent capture or  
11 whatever is specified in the rule?

12 A. I believe it would have passed on  
13 both accounts, yes.

14 MR. HARSCH: No further questions.

15 HEARING OFFICER HALLORAN: State?

16 MS. SANGHA: Yes. I have got just a  
17 couple questions.

18 CROSS-EXAMINATION

19 BY MS. SANGHA:

20 Q. Mr. Trzupek, just a couple questions  
21 for you. Do you have the raw data to substantiate  
22 the 40 pounds of VOM?

23 A. I do not.

24 Q. Do you have any of the raw data

1 available that supports this informal emissions  
2 test?

3 A. I do not. I actually contacted my  
4 brother who works at -- still works at Huff &  
5 Huff, which is where I was when I did this test to  
6 see if they have those data files, but they do  
7 not.

8 Q. So the data no longer exists, the  
9 raw data?

10 A. As far as I know, it does not, yeah.

11 Q. And do you recall the specific ink  
12 that you used when you conducted the informal  
13 test?

14 A. I know it was a four-color job. So  
15 there were four different Sun inks, but I don't  
16 recall the specific ones.

17 Q. And were these test results that  
18 were submitted to the agency formally for  
19 certification and compliance?

20 A. No, ma'am.

21 Q. So in that sense, no response would  
22 have been required of the agency to these informal  
23 test results?

24 A. I don't know what the agency's

1 obligations are for this sort of thing.

2 Q. You never submitted them and  
3 requested a response approval of your test  
4 results?

5 A. I did not request approval, no.

6 Q. And were you aware that the agency  
7 didn't find these informal tests to be reliable?

8 A. I was not.

9 Q. So in your opinion, you thought that  
10 the agency believed that this informal test was a  
11 reliable test? You did not know that this test  
12 was at issue?

13 A. No. I did not until I came up with  
14 this matter. I mean, we used that number, that  
15 destruction number and that capture number in our  
16 AERs and retro-filing our ERMS reports, and since  
17 those were not questioned, I assumed that the  
18 agency was okay with it at the time.

19 Q. Weren't those ERMS reports submitted  
20 after the 2004 formal compliance test?

21 A. They -- the ret -- the old ERMS  
22 reports, the retroactive ones?

23 Q. And I would have to go back to the  
24 record for this, but I thought the ERMS reporting,

1 the compliance that Packaging did on that were  
2 done after the formal test and not after this  
3 test?

4 A. And that may have been. I don't  
5 know when they were submitted, but for when we did  
6 the retroactive work to determine the annual  
7 emissions prior to 2002 and what our ERMS  
8 emissions were prior to 2002, we used this factor.

9 Q. And this would have been the only  
10 information that -- even a close guess available  
11 as to the possible --

12 A. Correct. That's -- that was our  
13 best information. So that's what we used in  
14 developing those documents.

15 MS. SANGHA: No further questions.

16 HEARING OFFICER HALLORAN: Thank  
17 you. Mr. Harsch, any redirect?

18 REDIRECT EXAMINATION

19 BY MR. HARSCH:

20 Q. Those ERMS -- retroactive ERMS  
21 applications were what they billed Packaging for?

22 A. That's my understanding, yes.

23 MR. HARSCH: No further.

24 HEARING OFFICER HALLORAN:

1 Ms. Sangha?

2 RE-CROSS-EXAMINATION

3 BY MS. SANGHA:

4 Q. Did you have a follow-up with the  
5 agency to ask them about the data that went into  
6 that ERMS reports?

7 A. I did not.

8 Q. Is it possible that there could have  
9 been some confusion about the numbers that you  
10 submitted and where those came from?

11 A. I guess that is possible.

12 MS. SANGHA: No further questions.

13 HEARING OFFICER HALLORAN: Mr.  
14 Harsch?

15 MR. HARSCH: None.

16 HEARING OFFICER HALLORAN:

17 Mr. Trzupek, you may step down again. Thank you.

18 We will go off the record.

19 (Whereupon, a discussion was had  
20 off the record.)

21 MR. HARSCH: I did want to just  
22 state for the record that I wanted to thank  
23 you for -- and my client would like to thank you  
24 for arranging with the City of Elmhurst that we



1 could continue the hearing today and complete it.  
2 Thank you.

3 HEARING OFFICER HALLORAN: I agree.  
4 They have been stupendous. Thank you. Let's go  
5 off the record.

6 (Whereupon, a discussion was had  
7 off the record.)

8 HEARING OFFICER HALLORAN: We were  
9 off the record talking about the post-hearing  
10 briefing schedule, and based on our tight  
11 schedule, I concluded by the contract the  
12 transcript should be in, filed with the Board by  
13 May 31st, but it may not be posted until June 3rd.  
14 So if we started from that date, with that said,  
15 Packaging Personified's opening brief is due on or  
16 before June 12th. The State's post-hearing brief  
17 is due on or before June 24th. Packaging's reply,  
18 if any, is due on or before July 3rd, and the  
19 parties have -- or mentioned to me that they will  
20 serve electronically on the due dates, and that  
21 was the agreement.

22 With that said, I do acknowledge  
23 this is a very difficult subject matter, and I  
24 appreciate it. I learned a lot today. And it's

1 approximately 5:45 and go in peace. Thank you.

2 (END OF PROCEEDINGS.)

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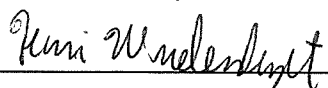
24

1 I, KARI WIEDENHAUPT, do hereby certify that  
2 the foregoing was reported by stenographic and  
3 mechanical means, which matter was held on the  
4 date, and at the time and place set out on the  
5 title page hereof and that the foregoing  
6 constitutes a true and accurate transcript of  
7 same.

8 I further certify that I am not related to  
9 any of the parties, nor am I an employee of or  
10 related to any of the attorneys representing the  
11 parties, and I have no financial interest in the  
12 outcome of this matter.

13 I have hereunder subscribed my hand on the  
14 31st day of May 2013.

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20  \_\_\_\_\_

21 KARI WIEDENHAUPT, CSR

22  
23  
24

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