

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 31 2005

STATE OF ILLINOIS  
Pollution Control Board

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

PCB 04-16  
(Enforcement)

**NOTICE OF FILING**

**TO:**

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

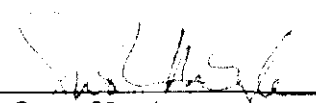
Christopher J. Grant  
Office of the Attorney General  
188 West Randolph  
20<sup>th</sup> Floor  
Chicago, IL 60601

**PLEASE TAKE NOTICE** that on **Monday, October 31, 2005**, we filed the attached **Answer to First Amended Complaint** via hand delivery with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

BY:

  
\_\_\_\_\_  
One of Its Attorneys

Roy M. Harsch  
Sasha M. Engle  
Gardner Carton & Douglas LLP  
191 N. Wacker Drive  
Suite 3700  
Chicago, Illinois 60606-1698  
(312) 569-1000

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**ANSWER TO FIRST AMENDED COMPLAINT**

Defendant, Packaging Personified ("Packaging"), by and through its attorneys Gardner Carton & Douglas LLP, for its Answer to First Amended Complaint ("Complaint"), states as follows:

**COUNT I**

**CONSTRUCTION OF EMISSION SOURCES WITHOUT A PERMIT**

1. This Amended Complaint is brought on behalf of THE PEOPLE OF THE STATE OF ILLINOIS by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

**ANSWER:**

Packaging admits that the Attorney General purports to bring this Complaint on behalf of the People of the State of Illinois pursuant to the Illinois Environmental Protection Act.

2. Illinois EPA is an administrative agency of the State of Illinois, established by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act, and regulations promulgated by the Illinois Pollution Control Board ("Board").

**ANSWER:**

Packaging admits that Paragraph 2 of Count I refers to the Act and avers that the Act speaks for itself.

3. At all times relevant to this Amended Complaint, Respondent PACKAGING PERSONIFIED, INC., was, and is, an Illinois corporation, duly authorized to transact business in the State of Illinois.

**ANSWER:**

Packaging admits the allegations of Paragraph 3 of Count I.

4. The Respondent owns and operates a polyethylene and polypropylene film processing and printing facility located at 246 Kehoe Boulevard, Carol Stream, Du Page County, Illinois ("Facility" or "Site"). At the time of the alleged violations, Du Page County was classified pursuant to the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as a 'severe ozone nonattainment area.'

**ANSWER:**

Packaging admits that it owns and operates the Facility located at 246 Kehoe Boulevard, in Carol Stream, Du Page County, Illinois. Further answering, the allegation regarding the ozone nonattainment status of DuPage County is a legal conclusion to which no answer is required.

5. As a regular part of its operations, the Respondent extrudes and prints plastic bags. The extrusion process is operated seven days per week, 24 hours per day. The printing process is operated 5 days per week, 16 hours per day. Since at least 1992, the extruders, flexographic printing presses, curing ovens, solvent cleaning processes, and other equipment at the Site (collectively "emission sources") have had the capacity to emit in excess of 25 tons of volatile organic material ("VOM") per year. The Respondent's actual 2002 VOM emissions were more than 44 tons.

**ANSWER:**

Packaging admits that it extrudes and prints bags. Further answering, Packaging states that it does not print every bag it extrudes. Further answering, Packaging admits that Presses No.

4 and 5 have integral tunnel dryers as part of the press. Packaging denies that a curing oven exists at its Facility. Packaging admits the remaining allegations of Paragraph 5 of Count I.

6. The Respondent began installation of emissions sources at the Site on a date better known to Respondent, but prior to 1989. During the years 1992, and 1995, the Respondent installed, and began operation of, four flexographic printing presses and a curing oven. During the years 1992 and 1995, the Respondent installed, and began operation of, four extruders. The Respondent did not apply for or obtain Illinois EPA construction permits for the presses, oven or extruders prior to construction/installation. The Respondent did not apply for or obtain operating permits for the presses, oven or extruders until July 2, 2002.

**ANSWER:**

Packaging admits that on or around the following dates, it installed and began operation of four printing presses, and two extruders:

- One extruder was installed in 1992
- Another extruder was installed in 1995
- Press #1 was installed in 1992
- Press #2 was installed in 1995
- Press #4 was installed in 1992 and removed in 2003
- Press #5 was installed in 1995
- Press #6 (Comexi) was installed in 2003

Two extruders were already in place in 1992. Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including construction permit requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance.

Further answering, Packaging states that prior to installation of Press No. 6 and its thermal oxidizer, it applied for and obtained construction permits.

7. On July 2, 2002, the Respondent applied for a Clean Air Act Permit Program Permit (“CAAPP Permit”) for its emission sources at the Site. On August 31, 2004, the Respondent applied to Illinois EPA for a Federally Enforceable State Operating Permit (“FESOP”) for its operations at the Site.

**ANSWER:**

Packaging admits the allegations of Paragraph 7 of Count I.

8. Section 9 of the Act, 415 ILCS 5/9 (2002), provides, in pertinent part, as follows:

No person shall:

\* \* \*

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

**ANSWER:**

Packaging admits that Paragraph 8 of Count I accurately quotes the selected section of the Act and avers that the Act speaks for itself.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides, as follows:

“PERSON” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

**ANSWER:**

Packaging admits that Paragraph 9 of Count I accurately quotes the selected section of the Act and avers that the Act speaks for itself.

10. The Respondent, an Illinois corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

**ANSWER:**

The allegations of Paragraph 10 of Count I are legal conclusions to which no answer is required.

11. Section 201.142 of the Board regulations, 35 Ill. Adm. Code 201.142, provides, as follows:

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

**ANSWER:**

Packaging admits that Paragraph 11 of Count I accurately quotes the selected section of the Code and avers that the Code speaks for itself.

12. Section 201.102 of the Board regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, as follows:

“Emission Source”: any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

“New Emission Source”: any emission source, the construction or modification of which is commenced on or after April 14, 1972.

**ANSWER:**

Packaging admits that Paragraph 12 of Count I accurately quotes the selected section of the Code and avers that the Code speaks for itself.

13. Respondent's extruders, flexographic printing presses, and ovens are "emission source[s]" and "new emission source[s]" as those terms are defined in 35 Ill. Adm. Code 201.102.

**ANSWER:**

Packaging denies the allegation that a curing oven exists at the Facility. Further, answering, the remaining allegations of Paragraph 13 of Count I are legal conclusions to which no answer is required.

14. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), contains the following definition:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

**ANSWER:**

Packaging admits that Paragraph 14 of Count I accurately quotes the selected section of the Act and avers that the Act speaks for itself.

15. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides, as follows:

"CONTAMINANT" is any solid, liquid, gaseous matter, any odor, or any form of energy, from whatever source.

**ANSWER:**

Packaging admits that Paragraph 15 of Count I accurately quotes the selected section of the Act and avers that the Act speaks for itself.

16. VOM emitted from emissions sources at the Site is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

**ANSWER:**

The allegations of Paragraph 16 of Count I are legal conclusions to which no answer is required.

17. Respondent’s emissions sources emit VOM, a contaminant injurious to human health, to the atmosphere, and therefore are capable of causing or contributing to air pollution.

**ANSWER:**

Packaging admits that its Facility emits VOM. Packaging denies the remaining allegations of Paragraph 17 of Count I.

18. On various dates from 1989 to the present, the Respondent commenced construction of the emissions sources at the Site without first having applied for or obtained construction permits from Illinois EPA. The Respondent thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.142. Respondent’s violations were willful, knowing, and repeated.

**ANSWER:**

Packaging admits that on or around 1992, 1995 and 2003, it installed and began operation of four printing presses and two extruders, and that two extruders were already in place in 1992. Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including construction permit requirements,



to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that prior to installation of Press No. 6 and its thermal oxidizer, it applied for and obtained construction permits. Further answering, the remaining allegations of Paragraph 18 of Count I are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

## **COUNT II**

### **OPERATION OF EMISSION SOURCES WITHOUT A PERMIT**

1-16. Complainant realleges and incorporates by reference herein Paragraphs 1 through 10, and Paragraphs 12 through 17, of Count I as Paragraphs 1 through 16 of this Count II.

#### **ANSWER:**

Packaging adopts its answers to Paragraphs 1-10 and Paragraphs 12 through 17 of Count I as its answers to Paragraphs 1-16 of Count II.

17. Section 201.143 of the Board regulations, 35 Ill. Adm. Code 201.143, provides, as follows:

No person shall cause or allow the operation of any new emission source or any new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information . . . as shall be specified in the construction permit.

#### **ANSWER:**

Packaging admits that Paragraph 17 of Count II accurately quotes the selected section of the Code and avers that the Code speaks for itself.

18. From 1989 until July 2, 2002, the Respondent operated one or more emission sources at the Site without having first applied for and obtained operating permits from Illinois EPA. The Respondent has thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and 35 Ill. Adm. Code 201.143. Respondent's violations were willful, knowing and repeated.

**ANSWER:**

Packaging admits that on or around from 1989 to July 2, 2002, it operated four presses and four extruders without obtaining an operating permit. Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including operating permit requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, the remaining allegations of Paragraph 18 of Count II are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

**COUNT III**

**FAILURE TO SUBMIT TIMELY ANNUAL EMISSIONS REPORTS**

1-11. Complainant realleges and incorporates by reference herein Paragraphs 1 through 6, Paragraphs 9 and 10, and Paragraphs 15 through 17 of Count I as Paragraphs 1 through 11 of this Count III.

**ANSWER:**

Packaging adopts its Answers to Paragraphs 1-6, Paragraphs 9 and 10, and Paragraphs 15 through 17 of Count I as its answers to Paragraphs 1-11 of this Count III.

12. The Respondent did not submit Annual Emission Reports to Illinois EPA for the years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000 and 2001, until August 8, 2002.

**ANSWER:**

Packaging admits that it did not submit until 2002 annual emission reports for the years 1992 through 2001. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including annual reporting requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that on or around August 8, 2002, it submitted Annual Emission Reports to Illinois EPA for years 1992 through 2001.

13. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides, in pertinent part, as follows:

No person shall:

- (a) cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

**ANSWER:**

Packaging admits that Paragraph 13 of Count III accurately quotes the selected section of the Act and avers that the Act speaks for itself.

14. Section 201.302(a) of the Board regulations, 35 Ill. Adm. Code 201.302(a), provides, as follows:

The owner or operator of any emission unit or air pollution control equipment, unless specifically exempted in this Section, shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant

emissions; provided, however, that the Agency may require more frequent reports where necessary to accomplish the purpose of the Act and this Chapter.

**ANSWER:**

Packaging admits that Paragraph 14 of Count III accurately quotes the selected section of the Code and avers that the Code speaks for itself.

15. Section 211.1950 of the Board regulations, 35 Ill. Adm. Code 211.1950, provides, as follows:

“Emission unit” means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

**ANSWER:**

Packaging admits that Paragraph 15 of Count III accurately quotes the selected section of the Code and avers that the Code speaks for itself.

16. Section. 211.6370 of the Board regulations provides, as follows:

“Stationary Source” means any building, structure, facility, or installation that emits or may emit any air pollutant.

**ANSWER:**

Packaging admits that Paragraph 16 of Count III accurately quotes the selected section of the Code and avers that the Code speaks for itself.

17. Respondent’s facility is a “stationary source” as that term is defined in 35 Ill. Adm. Code 211.6370.

**ANSWER:**

The allegation of Paragraph 17 of Count III is a legal conclusion to which no answer is required.

18. The emission sources at the Site are “emission unit[s]” as that term is defined in 35 Ill. Adm. Code 211.1950.

**ANSWER:**

The allegation of Paragraph 18 of Count III is a legal conclusion to which no answer is required.

19. Section 254.137 of the Board regulations, 35 Ill. Adm. Code 254.137, provides, in pertinent part, as follows:

- a) All Annual Emission Reports are due by May 1 of the year following the calendar year in which the emissions took place.

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 19 of Count III accurately quotes the selected section of the Code and avers that the Code speaks for itself.

20. The Respondent is the owner and/or operator of the VOM emission sources, and therefore was required to submit Annual Emission Reports, according to the schedule contained in 35 Ill. Adm. Code 254.137, for each calendar year from 1992 until the present.

**ANSWER:**

Packaging admits that its Facility emits VOM. Further answering, the remaining allegations of Paragraph 20 of Count III are legal conclusions to which no answer is required.

21. By failing to submit Annual Emission Reports for the years 1992 through 2001 until August 8, 2002, the Respondent violated Sections 201.302(a) and 254.137 of the Board regulations, 35 Ill. Adm. Code Sections 201.302(a) and 254.137, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent’s violations were willful, knowing, and repeated.

**ANSWER:**

Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including annual reporting requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that on or around August 8, 2002, it submitted Annual Emission Reports to Illinois EPA for years 1992 through 2001. The remaining allegations of Paragraph 21 of Count III are legal conclusions to which no answer is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

**COUNT IV**

**OPERATING A MAJOR STATIONARY SOURCE WITHOUT A CAAPP PERMIT**

1-15. Complainant realleges and incorporates by reference herein Paragraphs 1 through 11, Paragraph 13, and Paragraphs 15 through 17 of Count III, as Paragraphs 1 through 15 of this Count IV.

**ANSWER:**

Packaging adopts its Answers to Paragraphs 1-11, Paragraph 13, Paragraphs 15 through 17, of Count III as its answers to Paragraphs 1-15 of this Count IV.

16. Section 39.5 of the Act, 415 ILCS 5/39.5 (2002), provides, in pertinent part, as follows:

5. Applications and Completeness

a. An owner or operator of a CAAPP source shall submit its complete CAAPP application consistent with the Act and applicable regulations.

\* \* \*

6. Prohibition

\* \* \*

- b. After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

**ANSWER:**

Packaging admits that Paragraph 16 of Count IV accurately quotes the selected section of the Act and avers that the Act speaks for itself.

17. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2002), provides, in pertinent part, as follows:

“CAAPP” means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act.

“CAAPP Permit”. . . means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

“CAAPP source” means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

“Source” means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. . . .

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant. . . .

“Regulated air pollutant” means the following:

1. Nitrogen oxides (NOx) or any volatile organic compound. . . .

**ANSWER:**

Packaging admits that Paragraph 17 of Count IV accurately quotes the selected section of the Act and avers that the Act speaks for itself.

18. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2)(2002), provides in pertinent part, as follows:

a. Sources subject to this Section shall include:

1. Any major source as defined in paragraph c) of this subsection.

\* \* \*

c. For purposes of this Section the term “major source” means any source that is:

\* \* \*

iii. A major stationary source as defined in part D of Title I of the Clean Air Act including:

A. For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or . . . to emit 25 tons or more per year in areas classified as severe . . .

**ANSWER:**

Packaging admits that Paragraph 18 of Count IV accurately quotes the selected section of the Act and avers that the Act speaks for itself.

19. Since at least 1992, Respondent’s facility, located in what was a severe ozone nonattainment area throughout the relevant period, has had the potential to emit over 25 tons per year of VOM, and is a “major stationary source” as that term is defined in Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2002), and therefore also a “CAAPP source” as defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2002).



**ANSWER:**

Packaging admits that its Facility has the potential to emit over 25 tons per year of VOM. Packaging denies that its Facility is located in what is now a severe nonattainment area. Further answering, the remaining allegations of Paragraph 19 of Count IV are legal conclusions to which no answer is required.

20. Respondent owns and operates the emission sources at the Site, and therefore is the “owner and operator” of a “CAAPP source” as those terms are defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2002).

**ANSWER:**

Packaging admits that it owns and operates emission sources at its Facility. Further answering, the remaining allegations of Paragraph 20 of Count IV are legal conclusions to which no answer is required.

21. Section 39.5(5) of the Act, 415 ILCS 39.5(5) (2002), provides, in pertinent part, as follows:

- a. An owner or operator of a CAAPP source shall submit its complete CAAPP application consistent with the Act and all applicable regulations.

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 21 of Count IV accurately quotes the selected section of the Act and avers that the Act speaks for itself.

22. Section 270.201(b) of the Board regulations, 35 Ill. Adm. Code 270.201(b) provides, in pertinent part, as follows:

- b) an owner or operator of a CAAPP source with the following SIC codes shall submit its initial complete CAAPP application not later than 6 months after the

effective date of the CAAPP: 26 (paper and allied products); 27 (printing and publishing). . . .

**ANSWER:**

Packaging admits that Paragraph 22 of Count IV accurately quotes the selected section of the Code and avers that the Code speaks for itself.

23. The Respondent, as owner and operator of a CAAPP source, was required to submit its CAAPP application by March 1, 1996. However, the Respondent did not submit a CAAPP application to Illinois EPA until July 2, 2002.

**ANSWER:**

Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM Limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including CAAPP requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that it submitted a CAAPP application on or around July 2, 2002.

24. On August 31, 2004, prior to the issuance of its CAAPP Permit, the Respondent applied to Illinois EPA for a Federally Enforceable State Operating Permit ("FESOP") for its operations at the Site. Respondent's FESOP incorporated the use of a newly purchased thermal oxidizer, intended to reduce VOM emissions below 'major source' levels.

**ANSWER:**

Packaging admits that it submitted a FESOP application on or about August 31, 2004. Packaging further admits that its FESOP incorporated the use of a thermal oxidizer on Presses No. 5 and 6 and the removal of Press No. 4 to reduce VOM emissions at the Facility.

25. By failing to submit its application for a CAAPP permit by March 1, 1996, the Respondent violated Sections 39.5(5) and 39.5(6)(b) of the Act, 415 ILCS 5/39.5(5) and 5/39.5(6)(b) (2002), and 35 Ill. Adm. Code 270.201(b). By violating 35 Ill. Adm. Code

270.201(b), the Respondent thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM Limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including CAAPP requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that it submitted a CAAPP application on or around July 2, 2002. Further answering, Packaging states that it submitted a FESOP application on or about August 31, 2004. The remaining allegations of Paragraph 25 of Count IV are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act.

**COUNT V**

**VIOLATION OF NEW SOURCE REVIEW**

1-18. Complainant realleges and incorporates by reference herein Paragraphs 1 through 15, and Paragraphs 17 through 19 of Count IV as Paragraphs 1 through 18 of this Count V.

**ANSWER:**

Packaging adopts its answers to Paragraphs 1-15, and Paragraphs 17 through 19 of Count IV as its answers to Paragraphs 1-18 of Count V.

19. In 1992, the Respondent installed and began operations of flexographic printing 'Press No. 4' at the Site. Beginning in 1992, Press No 4 had the potential to emit approximately 52 tons per year of VOM. In 1995, the Respondent installed and began operations of flexographic printing 'Press No 5' at the Site. Beginning in 1995, Press No. 5 had the potential to emit approximately 120 tons per year of VOM uncontrolled, and approximately 39 tons per year of VOM when controlled. In addition, between 1992 and 1995, the Respondent constructed and operated other VOM emission sources consisting of two additional flexographic printing presses, one curing oven, and four extruders.

**ANSWER:**

Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. Further answering, Packaging states that two of the four extruders were already in place in 1992. Packaging admits the remaining allegations of Paragraph 19 of Count V.

20. From at least 1992 until at least 2002, the Respondent failed to evaluate the emission sources to determine whether process measures and control equipment at the Site produced the lowest achievable emission rate (LAER), and failed to demonstrate to Illinois EPA that its process produced LAER.

**ANSWER:**

Packaging admits that on or around 1992, 1995 and 2003, it installed and began operation of four printing presses and two extruders, and that two extruders were already in place in 1992. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM Limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including the LAER standard, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. The control systems added to Packaging's operations on Presses 5 and 6 in 2003, consisting of a thermal oxidizer and Permanent Total Enclosure (PTE), would meet the LAER standard for flexographic printing. Further answering, Packaging denies that the two extruders already in place in 1992 and Presses 1, 2 and 4 are subject to LAER.

21. Pursuant to authority granted under the Act, the Board has promulgated standards applicable to the construction and modification of major stationary sources of regulated air pollutants, at 35 Ill. Adm. Code, Part 203 ("Major Stationary Source regulations").

**ANSWER:**

Packaging admits that Paragraph 21 of Count V refers to the selected section of the Code and avers that the Code speaks for itself.

22. Section 203.201 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.201, provides, in pertinent part, as follows:

In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit volatile organic materials or Nitrogen oxides. . . .

**ANSWER:**

Packaging admits that Paragraph 22 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

23. Section 203.206 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.206 provides, in pertinent part, as follows:

a) For purposes of this Part, the term “major stationary source” shall exclusively mean “building, structure and facility,” as those terms are defined in Section 203.113 of this Part.

b) The following constitute a major stationary source:

- 1) For an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit volatile organic material in an amount equal to or greater than the following:

\* \* \*

C) 25 tons per year in an area classified as severe nonattainment for ozone;

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 23 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

24. Section 203.207 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.203 provides, in pertinent part, as follows:

**Major Modification of a Source**

- a) Except as provided in subsection (c), (d), (e) or (f) below, a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated a nonattainment area, shall constitute a major modification of a source

**ANSWER:**

Packaging admits that Paragraph 24 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

25. Section 203.208 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.208 provides, in pertinent part, as follows:

**Net Emission Determination**

A net emissions increase is the amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero. . . . The following steps determine whether the increase or decrease in emissions is available.

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 25 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

26. Section 203.209 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.209, provides, in pertinent part, as follows:

**Significant Emissions Determination**

\* \* \*

- b) For areas classified as serious or severe nonattainment for ozone, an increase in emissions of volatile organic material or nitrogen oxides shall be considered significant if the net emissions increase of such air pollutant from a stationary source located within such area exceeds 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred. This provision shall become effective beginning November 15, 1992, or such later date that an area is classified as a serious or severe nonattainment area for ozone.

**ANSWER:**

Packaging admits that Paragraph 26 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

27. Between 1992 and 1995, the Respondent installed emission sources consisting of flexographic printing presses, one curing oven, and four extruders, which collectively had the potential to emit, and actually emitted, more than 25 tons per year of VOM, a "significant net emissions increase". Respondent's installation and operation of these emission sources constituted a 'major modification of a source' as those terms are defined and used in the Major Stationary Source regulations.

**ANSWER:**

Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. The remaining allegations of Paragraph 27 of Count V are legal conclusions to which no response is required.

28. Section 203.203 of the Major Stationary Source Regulations, 35 Ill. Adm. Code 203.203, provides, in pertinent part, as follows:

- a) A construction permit is required prior to actual construction of a major new source or major modification.

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 28 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

29. Section 203.601 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.601 provides, as follows:

**Lowest Achievable Emission Rate Compliance Requirement**

No person shall cause or allow the operation of a new major stationary source or major modification subject to the requirements of Subpart C, except as in compliance with applicable LAER provisions established pursuant to Section 203.301 for such source or modification.

**ANSWER:**

Packaging admits that Paragraph 29 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

30. Section 203.301 of the Major Stationary Source regulations, 35 Ill. Adm. Code 203.301, provides, in pertinent part, as follows:

**Section 203.301 Lowest Achievable Emission Rates:**

- a) For any source, lowest achievable emission rate (LAER) will be the more stringent rate of emissions based on the following. . . .

\* \* \*



- c) Except as provided in subsection (e) or (f) below, the owner or operator of a major modification shall demonstrate that the control equipment and process measures applied to the major modification will produce LAER. This requirement applies to each emissions unit at which a net increase in emissions of the pollutant has occurred or would occur as a result of a physical change or change in the method of operation.
- d) The owner or operator shall provide a detailed showing that the proposed emission limitation constitutes LAER. . . .

**ANSWER:**

Packaging admits that Paragraph 29 of Count V accurately quotes the selected section of the Code and avers that the Code speaks for itself.

31. Between 1992 and 1998, The Respondent installed and operated flexographic printing presses, one curing oven, and four extruders, which therefore constituted a 'major modification of a source', without first applying for and obtaining from the Illinois EPA a permit setting forth the LAER emissions. The Respondent thereby violated Sections 203.203 and 203.201 of the Major Stationary Source regulations, 35 Ill. Adm. Code Sections 203.203 and 203.201, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent's violations were wilful, knowing and repeated.

**ANSWER:**

Packaging admits that on or around 1992, 1995 and 2003, it installed and began operation of four printing presses and two extruders, and that two extruders were already in place in 1992. Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM Limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including permit requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Responding further, Packaging states that Presses No. 5 and 6, which are totally enclosed and controlled by a thermal oxidizer, achieve LAER. Further

answering, Packaging denies that the two extruders already in place in 1992 and Presses 1, 2 and 4 are subject to LAER. The remaining allegations of Paragraph 31 of Count V are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

32. Beginning in 1992 through at least 1995, on a date or dates better known to Respondent, the Respondent caused or allowed a major modification of a VOM source, through construction and operation of flexographic printing presses, one curing oven, and four extruders, without conducting a review of control equipment and process measures applied to the modification, or otherwise determining whether the processes constituted LAER. The Respondent thereby violated Sections 203.201, 203.601, and 203.301 of the Major Stationary Source regulations, 35 Ill. Adm. Code Sections 203.201, 203.601, and 203.301, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent's violations were wilful, knowing and repeated.

**ANSWER:**

Packaging admits that on or around 1992, 1995 and 2003, it installed and began operation of four printing presses and two extruders, and that two extruders were already in place in 1992. Packaging denies that it installed a curing oven and further denies that a curing oven exists at its Facility. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM Limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including permit requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Responding further, Packaging states that Presses No. 5 and 6, which are totally enclosed and controlled by a thermal oxidizer, achieve LAER. Further answering, Packaging denies that the two extruders already in place in 1992 and Presses 1, 2 and 4 are subject to LAER. The remaining allegations of Paragraph 32 of Count V are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

## COUNT VI

### EMISSIONS REDUCTION MARKET SYSTEM VIOLATIONS

1-12. Complainant realleges and incorporates by reference herein, Paragraphs 1 through 11 and Paragraph 13 of Count III as Paragraphs 1 through 12 of this Count VI.

#### **ANSWER:**

Packaging adopts its answers to Paragraphs 1 through 11 and Paragraph 13 of Count III as its answers to Paragraphs 1 through 12 of Court VI.

13. During the five month period, May 1 until September 30, of each year from at least 1999 until the date of filing this Amended Complaint, Respondent's facility emitted more than 10 tons of VOM.

#### **ANSWER:**

Packaging admits the allegations of Paragraph 13 of Count VI.

14. Respondent did not submit the seasonal emissions component of annual emissions reports for the years 2000, 2001, and 2002, until May 16, 2003.

#### **ANSWER:**

Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including annual reporting requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that on or around August 8, 2002, it submitted Annual Emission Reports which contain seasonal emissions information to Illinois EPA for the years 2000 through 2002.

15. Pursuant to the requirements of Section 9.8 of the Act, 415 ILCS 5/9.8 (2002), the Board has established regulations creating and regulating alternative air pollution controls, including the Emission Reduction Market System ("ERMS"). Regulations requiring

participation and managing ERMS credits are found at 35 Ill. Adm. Code, Part 205 (“ERMS regulations”).

**ANSWER:**

Packaging admits that Paragraph 15 of Count VI refers to the selected sections of the Act and Code and avers that the Act and Code speak for themselves.

16. Section 205.130 of the ERMS regulations, 35 Ill. Adm. Code 205.130 provides, in pertinent part, as follows:

“Annual Emissions Report” means the report submitted to the Agency annually pursuant to 35 Ill. Adm. Code 25.4.

“Baseline emissions” means a participating source’s VOM emissions for the seasonal allotment period based on historical operations as determined under Subpart C of this Part. Baseline emissions shall be the basis of the allotment for each participating source.

“CAAPP” means the Clean Air Act Permit Program, pursuant to Section 39.5 of the Act [415 ILCS 5/39.5].

“Chicago ozone nonattainment area” means the area composed of Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County. “New participating source” means a source not operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has or will have seasonal emissions of at least 10 tons of VOM.

“Participating source” means a source operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has baseline emissions of at least 10 tons, as specified in Section 205.320(a) of this Part, or seasonal emissions of at least 10 tons in any seasonal allotment period beginning in 1999.

“Seasonal allotment period” means the period from May 1 through September 30 of each year.

“Seasonal emissions” means actual VOM emissions at a source that occur during a seasonal allotment period.

**ANSWER:**

Packaging admits that Paragraph 16 of Count VI accurately quotes the selected section of the Code and avers that the Code speaks for itself.

17. From at least 1999 until the present, Respondent's facility had seasonal emissions of at least 10 tons of VOM, and was a "participating source" as that term is defined in 35 Ill. Adm. Code 205.130. The Respondent is owner and operator of a "participating source".

**ANSWER:**

Packaging admits that from 1999 to the present the Facility had seasonal emissions of at least 10 tons of VOM. Further answering, the remaining allegations of Paragraph 17 of Count VI are legal conclusions to which no answer is required.

18. Section 205.310 of the ERMS regulations, 35 Ill. Adm. Code 205.310, provides, in pertinent part, as follows:

a) The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:

1) For a participating source with baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Subpart, by March 1, 1998;

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 18 of Count VI accurately quotes the selected section of the Code and avers that the Code speaks for itself.

19. Section 205.300 of the ERMS regulations, 35 Ill. Adm. Code 205.300 provides, in pertinent part, as follows:

**Section 205.300 Seasonal Emissions Component of the Annual Emissions Report**

- a) For each year in which the source is operational, the owner or operator of each participating source and new participating source shall submit, as a component of its Annual Emissions Report, seasonal emissions information to the Agency for each seasonal allotment period after the effective date of this Part in accordance with the following schedule:
  - 1) For each participating source or new participating source that generates VOM emissions from less than 10 emission units, by October 31 of each year;

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 19 of Count VI accurately quotes the selected section of the Code and avers that the Code speaks for itself.

- 20. Section 254.501 of the Board regulations, 35.Ill. Adm. Code 254.501, provides, in pertinent part, as follows:

**Section 254.501 Contents of a Seasonal Emissions Report**

- a) The owner or operator of a source subject to the seasonal emissions reporting requirements for ERMS required by 35 Ill. Adm. Code 205.300 must provide the following information:
  - 1) Source identification information:
    - A) Source name, physical location and mailing address;
    - B) Name of Responsible Official; and
    - C) Source contact telephone number.

\* \* \*

- b) The owner or operator of a participating source or new participating source under 35 Ill. Adm. Code 205 must provide total seasonal actual emissions of hazardous air

pollutants (HAPs) that are also VOM for the following HAPs:

\* \* \*

c) The owner or operator of each participating source or new participating source under 35 Ill. Adm. Code 205 must provide responses to the following questions regarding VOM HAPs for the seasonal allotment period addressed in the Seasonal Emissions Report:

1) To your knowledge, did emissions of any HAP increase at your source due to receipt or expected receipt of additional Allotment Trading Units (ATUs)?

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 20 of Count VI accurately quotes the selected section of the Code and avers that the Code speaks for itself.

21. Respondent was required submit its ERMS baseline application to Illinois EPA by March 1, 1998. By failing to submit its ERMS baseline, the Respondent violated Section 205.310 of the ERMS regulations, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent's violations were willful, knowing and repeated.

**ANSWER:**

Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including EMRS regulations, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, the remaining allegations of Paragraph 21 of Count VI are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

22. Respondent's facility contains less than 10 emissions sources. Respondent was therefore required to submit seasonal emission information for the years 2000, 2001, and 2002, conforming with 35 Ill. Adm. Code Sections 205.300 and 254.501, by October 31st of each respective year.

**ANSWER:**

Packaging admits that its Facility contains less than 10 emission sources. Further answering, Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including annual reporting requirements, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, Packaging states that on or around August 8, 2002, it submitted Annual Emission Reports to Illinois EPA from 2000 through 2002 that contain seasonal emission information.

23. By failing to submit seasonal emission information for any year until May 16, 2003, the Respondent violated 35 Ill. Adm. Code Sections 205.300 and 254.501, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging states that it was the owner of the site prior to 1993 when it was not subject to specific VOM limitations, and hence, was not aware of the subsequent potential applicability of environmental regulations, including the submission of seasonal emission information, to its operations. As soon as Packaging learned of the potential applicability of the regulations, it took steps to come into compliance. Further answering, the remaining allegations of Paragraph 23 of



Count VI are legal conclusions to which no response is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

### COUNT VII

#### VIOLETION OF FLEXOGRAPHIC PRINTING RULES: FAILURE TO DEMONSTRATE COMPLIANCE

1-12. Complainant realleges and incorporates by reference herein, Paragraphs 1 through 11, and paragraph 13, of Count III, as Paragraphs 1 through 12 of this Count VII.

#### ANSWER:

Packaging adopts its answers to Paragraphs 1-11 and Paragraph 13 of Count III as its answers to Paragraphs 1-12 of Count VII.

13. From at least April, 1992 until the present, the Respondent has applied flexographic printing inks at its facility having an as-applied VOC content, as listed below:

FLEXOGRAPHIC PRINTING INK *	VOC CONTENT (% by volume)**
Suntex H/R Silver	67.5
Sunshen 021 Orange	57.69
Sunshen Madras Orange	59.3
Methyl Violet Base	62.97
Sunshen Pant Purple,	71.3
N/C Carbozole Purple	86.62

[\* Trade names of Sun Chemical Company]

[\*\* VOC content does not include water or other excluded substances]

#### ANSWER:

Packaging admits that since April 1992 to the present, it has used these inks in addition to numerous other inks at its Facility.

14. On October 5, 2001 and April 22, 2004, Illinois EPA inspectors visited the Site and determined that the Respondent had failed to perform testing to demonstrate compliance with the VOC limitation applying to flexographic printing operations, failed to test its inks for

VOM content, failed to collect and record ink usage and VOM content, and failed to record the daily weighted average of VOM content of flexographic inks used at the Site. On information and belief the Respondent has failed to properly perform the above-listed testing, analysis and record keeping from September 17, 1993 until the date of filing of this Amended Complaint.

**ANSWER:**

Packaging admits that on or around October 5, 2001 and April 22, 2004, Illinois EPA inspectors visited the Facility. Packaging further states that the daily weighted average of VOM content is not relevant to the manner in which compliance is determined. Packaging has always relied upon the MSDSs supplied by the ink manufacturers for determination of the VOM content. Packaging denies the remaining allegations of Paragraph 14 of Count VII.

15. Pursuant to authority granted under the Act, the Board has promulgated regulations limiting organic material emissions in the Chicago area, found at 35 Ill. Adm. Code part 218 (“O/M” Emission regulations”).

**ANSWER:**

Packaging admits that Paragraph 15 of Count VII refers to the selected section of the Code and avers that the Code speaks for itself.

16. Section 218.103 of the O/M Emission regulations, 35 Ill. Adm. Code 218.103, provides, in pertinent part, as follows:

**Applicability**

The provisions of this Part shall apply to all sources located in the Chicago area, which is composed of Cook, DuPage, Kane, Lake, McHenry and Will Counties, and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County.

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 16 of Count VII accurately quotes the selected section of the Code and avers that the Code speaks for itself.

17. Section 218.106 of the O/M emission regulations provides, in pertinent part, as follows:

**Compliance Dates**

- a) Except as otherwise provided in this Section or as otherwise provided in a specific Subpart of this Part, compliance with the requirements of all rules is required by July 1, 1991. . . .

\* \* \*

**ANSWER:**

Packaging admits that Paragraph 17 of Count VII accurately quotes the selected section of the Code and avers that the Code speaks for itself.

18. Subpart H of the O/M emission regulations, titled PRINTING AND PUBLISHING (“Flexographic Printing rules”), regulates organic material content, material usage reporting, and record keeping for the flexographic printing industry within the greater Chicago area, including Du Page County, Illinois.

**ANSWER:**

Packaging admits that Paragraph 18 of Count VII refers to the selected section of the Code and avers that the Code speaks for itself.

19. Section 218.402 of the Flexographic Printing rules, 35 Ill. Adm. Code 281.402 provides, in pertinent part, as follows:

- a) The limitations of Section 218.401 of this Part apply to all flexographic and rotogravure printing lines at a subject source. Sources with flexographic and/or rotogravure printing lines are subject sources if:

\* \* \*

- 2) The flexographic and rotogravure printing lines(s) . . . at the sources have a potential to emit [25 tons] or more of VOM per year.

**ANSWER:**

Packaging admits that Paragraph 19 of Count VII accurately quotes the selected section of the Code and avers that the Code speaks for itself.

20. Respondent's four flexographic printing lines have the potential to emit more than 25 tons of VOM per year, and are "subject sources" as that term is defined and used in 35 Ill. Adm. Code 218.402. The Respondent is the "owner and operator" of subject flexographic printing emission sources.

**ANSWER:**

Packaging admits that its four flexographic printing lines have the potential to emit more than 25 tons of VOM per year. Further answering, the remaining allegations of Paragraph 20 of Count VII are legal conclusions to which no response is required.

21. Section 218.401 of the Flexographic Printing Rules, 35 Ill. Adm. Code 218.401 [effective September 27, 1993], provides, in pertinent part, as follows:

- a) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply at any time any coating or ink unless the VOM content does not exceed the limitation specified in either subsection (a)(1) or (a)(2) below. Compliance with this Section must be demonstrated through the applicable coating or Ink analysis test methods and procedures specified in Section 218.105(a) of this part and the record keeping and reporting requirements specified in 218.404(c) of this Part. . . .
  - 1) Forty percent VOM by volume of the coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM), or

\* \* \*

- b) No owner or operator of a subject flexographic . . . printing line shall apply coatings or inks on the subject printing line unless the weighted average, by volume, VOM content of all coatings and inks as applied each day on the subject printing line does not exceed the limitations specified in either subsection (a)(1) [as determined by subsection (b)(1)] or subsection (a)(2) [as determined by subsection b(2)]. Compliance with this subsection must be demonstrated through the applicable coating or ink analysis test methods and procedures specified in Section 218.105(a) of this Part and the record keeping and reporting requirements specified in Section 218.404(d) of this Part.

**ANSWER:**

Packaging admits that Paragraph 21 of Count VII accurately quotes the selected section of the Code and avers that the Code speaks for itself.

22. From September 27, 1993 until the date of filing this Amended Complaint, the Respondent applied inks with a VOM content in excess of forty percent, without performing any analysis of ink usage or otherwise demonstrating compliance with Section 218.401 of the Flexographic Printing Rules. The Respondent thereby violated 35 Ill. Adm. Code 218.401, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging admits that it used inks with a VOM content in excess of forty percent on Press No. 4 until it was shut down. Packaging further admits that it used inks with a VOM content in excess of forty percent on Presses No. 5 and 6, which are controlled by a thermal oxidizer. Packaging denies that it used inks with a VOM content in excess of forty percent on Presses No. 1 and 2. Packaging further admits that it has always relied upon the MSDSs supplied by the ink manufacturers for determination of the VOM content. Further answering, the remaining allegations of Paragraph 22 of Count VII are legal conclusions to which no response is

required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or any regulations.

### **COUNT VIII**

#### **VIOLATION OF FLEXOGRAPHIC PRINTING RULES: FAILURE TO MAINTAIN RECORDS**

1-20. Complainant realleges and incorporates by reference herein Paragraphs 1 through 20, of Count VII, as Paragraphs 1 through 20 of this Count VIII.

#### **ANSWER:**

Packaging adopts its answers to Paragraphs 1-20 of Count VII as its answers to Paragraphs 1-20 of Count VIII.

21. Section 218.404 of the Flexographic Printing Rules [effective September 27, 1993], provides, in pertinent part, as follows:

#### **Record keeping and Reporting**

a) The VOM content of each coating and ink and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in Section 218.105 of this Part to establish the records required under this Section.

\* \* \*

c) Any owner or operator of a printing line subject to the limitations of Section 218.401 of this Part . . . shall comply with the following:

2) On and after a date consistent with Section 218.106 of this Part, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of Section 218.401 of this Part . . . shall collect and record all of the following information each day for each coating line and maintain the information at the source for a period of three years:

- A) The name and identification number of each coating and ink as applied on each printing line.
- B) The VOM content of each coating and ink as applied each day on each printing line.

\* \* \*

d) Any owner or operator of a printing line subject to the limitations of Section 218.401 of this Part . . . shall comply with the following:

2) On and after a date consistent with Section 218.106 of this Part, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of Section 218.401 of this Part . . . shall collect and record all of the following information each day for each printing line and maintain the information at the source for a period of three years:

- A) The name and identification number of each coating and ink as applied on each printing line.
- B) The VOM content and the volume of each coating and ink as applied each day on each printing line.
- C) The daily-weighted average VOM content of all coatings and inks as applied on each printing line.

**ANSWER:**

Packaging admits that Paragraph 21 of Count VIII accurately quotes the selected section of the Code and avers that the Code speaks for itself.

22. On October 5, 2001 and April 22, 2004, Illinois EPA inspectors determined that the Respondent had failed to collect, record, and maintain records of the volume, name, identification number, VOC content, and daily weighted VOC content of inks and coatings used and applied at its facility. On information and belief, the Respondent has failed to keep and maintain these records from September 17, 1993 until the date of filing this Amended Complaint.

The Respondent thereby violated Section 218.404 (c) and (d) of the Flexographic Printing Rules, 35 Ill. Adm. Code 218.404 (c) and (d), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging denies the allegations of Paragraph 22 of Count VIII. Further answering, the allegations of Paragraph 22 of Count VIII are legal conclusions to which no response is required. Packaging denies that it knowingly, willfully or repeatedly violated the Act or any regulations.

**COUNT IX**

**VIOLATION OF CONSTRUCTION PERMIT:  
EXCEEDING VOM USAGE LIMITS**

1-10. Complainant realleges and incorporates by reference herein, Paragraphs 1 through 10 of Count I as Paragraphs 1 through 10 of this Count IX.

**ANSWER:**

Packaging adopts its answers to Paragraphs 1-10 of Count I as its answers to Paragraphs 1-10 of Count IX.

11. Illinois EPA issued Construction Permit No. 03030016 ("Construction Permit") to Respondent on August 13, 2003. The permit authorized construction and operation of one flexographic printing press ("Comexi press") as replacement of existing press #4, and one regenerative thermal oxidizer ("RTO") controlling the Comexi press and another existing press ("press #5") at the Facility, subject to enumerated permit conditions. In addition, the Permit placed conditions on presses number 1 & 2 (collectively "uncontrolled presses").

**ANSWER:**

Packaging admits that on or around August 13, 2003, Illinois EPA issued Construction Permit No. 03030016 to Packaging and avers that the Permit speaks for itself.

12. Condition 5 of Respondent's Construction Permit provides, in part:

Emissions and operation of all printing shall not exceed the following limits:



<u>Emission Unit</u>	<u>VOM Usage (Lb/Mo)</u>	<u>VOM Usage (Ton/Yr)</u>	<u>VOM Emissions (Lb/Mo)</u>	<u>VOM Emissions (Ton/Yr)</u>
#1 and #2 Presses	524	2.62	524	2.62
Comexi and #5 Presses	24,960	124.80	3,396	16.98
Cleanup and Other Solvents	980	4.90	980	4.90

**ANSWER:**

Packaging admits that Paragraph 12 of Count IX accurately quotes the selected section of the Permit and avers that the Permit speaks for itself.

13. Between August, 2003 and July, 2004, Respondent's actual VOM usage was, in pertinent part, as follows:

<u>Month/Year</u>	<u>VOM Total Usage (Lb/Mo)</u>
	<u>26,464</u>
August/2003	37,788
September/2003	38,228
October/2003	39,567
December/2003	29,816
April/2004	28,095
May/2004	31,356
June/2004	45,610
July/2004	26,904

**ANSWER:**

Packaging is currently reviewing its records and can neither admit nor deny the allegations of Paragraph 13 of Count IX. Investigation continues.

14. During the months of August through October 2003, December 2003, and April through July 2004 the Respondent exceeded its permitted VOM usage limits. The Respondent

thereby violated Condition 5 of its Permit, and thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging denies the allegations of Paragraph 14 of Count IX. Further answering, Packaging denies that it willfully, knowingly or repeatedly violated the Act or its Permit.

**COUNT X**

**VIOLATION OF CONSTRUCTION PERMIT:  
FAILURE TO DEMONSTRATE COMPLIANCE**

1-11. Complainant realleges and incorporates by reference herein Paragraphs 1 through 11 of Count IX as Paragraphs 1 through 11 of this Count X.

**ANSWER:**

Packaging adopts its Answers to Paragraphs 1-11 of Count IX as its answers to Paragraphs 1-11 of Count X.

12. Condition 4(c) of Construction Permit No. 03030016 provides:

For the 2 uncontrolled presses, the Permittee shall meet 35 Ill. Adm. Code 218.401(a) by not applying flexographic coatings or inks which exceed the following:

- i. 40% VOM by volume of the coating and ink (minus water and any other exempt compounds from VOM), or
- ii. 25% VOM by volume of the volatile content of the coating and ink.

**ANSWER:**

Packaging admits that Paragraph 12 of Count X accurately quotes the selected section of the Permit and avers that the Permit speaks for itself.

13. Illinois EPA inspected the Facility on April 22, 2004. At the time of inspection, the Respondent was applying inks with more than 40% VOM, but was unable to demonstrate through record-keeping or other means that these inks were not used on presses number 1 & 2, the uncontrolled printing presses. The Respondent has thereby violated Condition 4(c) of its

Construction Permit, and has thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002). Respondent's violations were wilful, knowing, and repeated.

**ANSWER:**

Packaging admits that Illinois EPA inspected the Facility on or around April 22, 2004. Packaging denies the remaining allegations of Paragraph 13 of Count X. Further answering, Packaging denies that it willfully, knowingly or repeatedly violated the Act or its Permit.

**COUNT XI**

**VIOLATION OF CONSTRUCTION PERMIT:  
FAILURE TO CONDUCT REQUIRED TESTING**

1-13. Complainant realleges and incorporates by reference herein, Paragraphs 1 through 11 of Count IX, and Paragraphs 21 through 22 of Count VIII, as Paragraphs 1 through 13 of this Count XI.

**ANSWER:**

Packaging adopts its answers to Paragraphs 1-11 of Count IX and Paragraphs 21 through 22 of Count VIII, as its answers to Paragraphs 1-13 of this Count XI.

14. Illinois EPA inspected the Facility on April 22, 2004. At the time of the inspection, Respondent was unable to demonstrate through record-keeping or other means, that the required VOM testing of its inks and coatings was conducted.

**ANSWER:**

Packaging admits that Illinois EPA inspected the Facility on or around April 22, 2004. Further answering, Packaging denies the remaining allegations of Paragraph 14 of Count XI.

15. Condition 4(d) of Respondent's Permit provides, as follows:

The coating and inks shall be tested by the VOM content test methods of 35 Ill. Adm. Code 218.105(a).

**ANSWER:**

Packaging admits that Paragraph 15 of Count X accurately quotes the selected section of the Permit and avers that the Permit speaks for itself.

16. Respondent applied inks and coatings without performing the required testing of the VOM content of each coating and ink used at its facility. The Respondent thereby violated Condition No. 4(d) of its Permit, and thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging admits that it has always relied upon the MSDSs supplied by the ink manufacturers for determination of the VOM content. Further answering, the remaining allegations of Paragraph 16 of Count XI are legal conclusions to which no answer is required. Packaging denies that it willfully, knowingly or repeatedly violated the Act or its Permit.

**COUNT XII**

**VIOLATION OF CONSTRUCTION PERMIT:  
FAILURE TO MAINTAIN RECORDS**

1-13. Complainant realleges and incorporates by reference herein, Paragraphs 1 through 13 of Count XI as Paragraphs 1 through 13 of this Count XII.

**ANSWER:**

Packaging adopts its answers to Paragraphs 1-13 of Count XI as its answers to Paragraphs 1-13 of Count XII.

14. At the April 22, 2004 inspection, the Respondent was unable to provide Illinois EPA inspectors with daily and/or monthly records of names, amounts, and VOM content of inks used at the facility, VOM and Hazardous Air Pollutant ("HAP") emissions, or a maintenance log for its air pollution control system. On information and belief, the Respondent failed to make and keep the above-listed records from at least August 13, 2003 until at least April 22, 2004.

**ANSWER:**

Packaging admits that Illinois EPA inspected the Facility on or around April 22, 2004.

Packaging denies the remaining allegations of Paragraph 14 of Count XI.

15. Condition 15 of Construction Permit No. 03030016 provides, in pertinent part, as follows:

The permittee shall maintain daily records of the following items:

- a.. Names of inks used and their VOM content, as applied (lb/gal) separately for controlled and uncontrolled presses.

\* \* \*

- d. A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

**ANSWER:**

Packaging admits that Paragraph 15 of Count XII accurately quotes the selected section of the Permit and avers that the Permit speaks for itself.

16. Condition 16 of construction permit No. 03030016 provides:

The Permittee shall maintain monthly records of the following items:

1. Names and amounts of solvents used for the ink dilution (gal/mo) and their VOM and HAP content (lb/gal).
2. Names and amounts of solvents used for the ink dilution (gal/mo) and their VOM and HAP content (lb/gal).
3. Names and amounts of solvent used for cleanup (gal/mo) and their VOM and HAP content (lb/gal).
4. VOM and HAP emissions for preceding month (tons/month) and preceding 12 months (tons/year).

**ANSWER:**

Packaging admits that Paragraph 16 of Count XII accurately quotes the selected section of the Permit and avers that the Permit speaks for itself.

17. From August 13, 2003, until at least April 22, 2004, the Respondent failed to collect, record, and maintain daily records of names and VOM content of inks used, and failed to maintain daily maintenance records for its emission capture system. The Respondent thereby violated Condition 15 of its Construction Permit, and thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

**ANSWER:**

Packaging denies the allegations of Paragraph 17 of Count XII.

18. From August 13, 2003, until at least April 22, 2004, the Respondent failed to make and keep monthly records of Inks used, VOM and HAP content, and VOM and HAP emissions. The Respondent thereby violated Condition 16 of its Construction Permit, and thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002). Respondent's violations were willful, knowing, and repeated.

**ANSWER:**

Packaging denies the allegations of Paragraph 14 of Count XII. Further answering, Packaging denies that it willfully, knowingly or repeatedly violated the Act or its Permit.

Respectfully Submitted,

PACKAGING PERSONNIFIED, INC., RESPONDENT

By: 

One of the Attorneys for Respondent

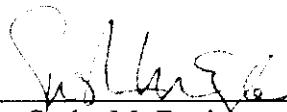
Roy M. Harsch  
Sasha M. Engle  
Gardner Carton & Douglas LLP  
191 N. Wacker Drive  
Suite 3700  
Chicago, Illinois 60606-1698  
(312) 569-1000

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **Answer to First Amended Complaint** was filed via hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties below by U.S. First Class Mail on **Monday, October, 31, 2005**.

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

Christopher J. Grant  
Office of the Attorney General  
188 West Randolph  
20<sup>th</sup> Floor  
Chicago, IL 60601

  
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Sasha M. Engle