

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PETITION OF GREIF, INC. AND)	AS 2011-001
GREIF PACKAGING, LLC)	
FOR AN ADJUSTED STANDARD FROM)	(Adjusted Standard – Air)
35 ILL ADM. CODE PART 218)	
SUBPART TT)	

NOTICE OF FILING

TO:

John Therriault, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph Street, Suite 11-500
 Chicago, IL 60601

Charles Matoesian
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioners' **NOTICE OF FILING, APPLICATION FOR TREATMENT AS NON-DISCLOSABLE INFORMATION and CERTIFICATE OF SERVICE**, copies of which are attached herewith and served upon you.

Respectfully submitted,

GREIF, INC. and GREIF PACKAGING, LLC

By: *Susan Charles*
 One of its Attorneys

Date: December 8, 2011

Thomas W. Dimond
 Susan Charles
 ICE MILLER LLP
 200 West Madison Street
 Suite 3500
 Chicago, Illinois 60606

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF GREIF, INC. AND) AS 2011-001
GREIF PACKAGING, LLC)
FOR AN ADJUSTED STANDARD FROM) (Adjusted Standard – Air)
35 ILL ADM. CODE PART 218)
SUBPART TT)

APPLICATION FOR TREATMENT AS NON-DISCLOSABLE INFORMATION

Petitioners Greif, Inc. and Greif Packaging, LLC ("Greif") seek a determination by the Illinois Pollution Control Board ("Board") pursuant to 35 I.A.C. § 130.406 that certain information identified on Exhibit 1 to this application is entitled to protection from public disclosure as "non-disclosable" information. In support of its application Greif states the following:

1. A March 21, 2011 Hearing Officer Order ("Order") directed Greif to provide an Ambient Air Quality Impact Analysis ("Air Quality Analysis") for ozone to support its proposed adjusted standard.

2. Greif presented the Air Quality Analysis to the Agency for review and comment. Counsel for the Agency represented to counsel for Greif that the Agency had no comments to the Air Quality Analysis. Greif subsequently filed the Air Quality Analysis with the Board on November 1, 2011.

3. On November 8, 2011, the Hearing Officer served on Greif and the Agency three pre-hearing questions on the Air Quality Analysis of the VOC Emissions from the Greif Packaging Facility in Naperville, Illinois, Using the Scheffe Tables (the "Questions").

4. A thorough response to the Questions requires a response that includes information constituting "confidential data" as described in 415 I.L.C.S. § 5/7(a) and 35 Ill. Adm. Code § 101.202.

5. The specific information that Greif considers "confidential data" and seeks to protect from disclosure includes the average weight of VOC sprayed into each lined drum as part of Greif's QC test process over different time periods and calculations of the maximum production capacity of Greif's facility based on those averages. The maximum production capacity information is competitive information that Greif treats as confidential business information, and the averages of VOC sprayed per lined drum could be used in conjunction with Greif's reported actual emissions to calculate its actual annual production of lined drums. That actual production data is also competitive information that Greif treats as confidential business information.

6. Certain individuals within Greif (Khaalis Rahman, Plant Manager, and Scott Mounts, Director, Environmental, Health & Safety NA) and Greif's environmental consultant, Thomas C. Ponder, are familiar with the data and information sought to be protected from disclosure.

7. Greif always has maintained its annual production data as confidential business information. The averages referenced above were previously submitted to the Illinois Environmental Protection Agency (the "Agency"), and the Agency determined that the averages were to be protected from disclosure under its regulations implementing the Illinois Freedom of Information Act. Attached as Exhibits 2 and 3 are Greif's letter supporting the confidential nature of the data and the Agency's determination according the information protection from

disclosure. Greif believes that the information contained in the exhibits should be sufficient to satisfy the requirements of the Board's regulations.

8. The non-disclosable information sought to be protected through this application is included on the attached Exhibit 1. Consistent with 35 Ill. Adm. Code Section 130.404(a)(1), Greif has **not redacted** the non-disclosable information in Exhibit 1. As required by 35 Ill. Adm. Code Section 130.404(c)(4), Greif is separately filing a **redacted** version of Exhibit 1 with the Office of the Clerk of the Board.

9. Consistent with 35 Ill. Adm. Code Section 130.404, Greif is serving the Agency with a **redacted** copy of Exhibit 1.

10. There is no decision deadline associated with a petition for adjusted standard. See 35 Ill. Adm. Code Section 101.308(a). Therefore the waiver of statutory deadline referenced in 35 Ill. Adm. Code Section 130.404(e)(5) seems to be inapplicable and Greif has submitted no such waiver.

WHEREFORE, for the reasons stated above, Greif has demonstrated that the confidential business information included on Exhibit 1 constitutes non-disclosable information entitled to protection from public disclosure and seeks a determination from the Board that its non-disclosable information is subject to protection from disclosure under 35 Ill. Adm. Code Section 130.406(c).

Respectfully submitted,

GREIF, INC. and GREIF PACKAGING, LLC

By: Susan Charles
One of its Attorneys

Date: December 8, 2011

Thomas W. Dimond
Susan Charles
ICE MILLER LLP
200 West Madison Street
Suite 3500
Chicago, Illinois 60606


CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 8th day of December, 2011, I have served by hand-delivery the attached NOTICE OF FILING and APPLICATION FOR TREATMENT AS NON-DISCLOSABLE INFORMATION upon the following person:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and by U.S. Mail, first class postage prepaid, and electronic mail to the following person:

Charles Matoesian
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276


Susan Charles

NON-DISCLOSABLE INFORMATION – AT PAGE 2 OF 3.

**Response of Greif Packaging LLC to
Hearing Questions for Petitioner and IEPA Served on November 8, 2011**

Prepared by Thomas C. Ponder, Jr., PE

On November 8, 2011, the Hearing Officer served on Greif and the Illinois Environmental Protection Agency three pre-hearing questions on the Final Air Quality Impact Analysis of the VOC Emissions from the Greif Packaging Facility in Naperville, Illinois, Using the Scheffe Tables (AQIA Analysis). I prepared the AQIA Analysis, and following are my responses to those questions.

Question A: Calculation of VOC Emissions for the Air Quality Impact

The first question essentially asked whether the AQIA Analysis had overestimated the projected difference in VOC emissions between compliance with Subpart TT and compliance with the proposed adjusted standard. It also suggested an alternate formula for calculating the difference. The AQIA Analysis was prepared in response to a Hearing Officer order requesting that Greif prepare an ambient air quality impact analysis considering the "worst case scenario, using the maximum permitted VOM emissions" to "quantify the difference in emissions that would occur if Greif complied with" the proposed adjusted standard rather than Subpart TT.

Developing a "worst case" analysis requires hypothesizing alternate operating scenarios and implicitly what the emissions could be under either alternate scenario. In some sense, the difference could be zero. Subpart TT does not cap annual emissions and the proposed adjusted standard caps annual emissions at the same level as the facility's FESOP. Because the FESOP limit would also apply if the facility complied with Subpart TT, under either scenario, the maximum annual emissions are 22.8 tpy and the difference is zero. The weakness of this approach is that for any particular production level that yields emissions below 22.8 tpy, there would be an actual difference in projected emissions greater than zero.

Question A suggested calculating the emission differential using the following formula:

$$[22.8 \text{ tpy} \cdot (1 - 0.731)] - [22.8 \text{ tpy} \cdot (1 - 0.81)] = 1.8 \text{ tpy}$$

Where 22.8 tpy is the maximum permitted VOC emissions;

.731 is the projected emissions reductions from the adjusted standard; and

.81 is the emissions reductions required by Subpart TT.

This approach has some basis in the FESOP because the FESOP not only limits VOC emissions to 22.8 tpy but also limits VOC usage to 22.8 tpy. But, the VOC usage limitation in the FESOP was tied to the fact that the Naperville facility had no emissions control devices. If the facility installed an oxidizer or other technology to comply with Subpart TT, then the FESOP would probably be amended to eliminate the VOC usage limitation and simply rely upon the VOC emission limitation to maintain the facility's minor source status. This approach also misapplies the 73.1% reduction in VOC usage from the adjusted standard because that is a per unit

NON-DISCLOSABLE INFORMATION

reduction – not a reduction that applies after VOC usage. The formula proposed in Question A also leads to odd results. The first bracket of the formula computes the post-adjusted standard emissions as 6.13 tpy, and the second bracket computes the hypothetical emissions from complying with Subpart TT as 4.33 tpy. The difference between these is 1.8 tpy, but calculating an ozone increment based on these estimates does not make sense. As reflected in the amended petition for the adjusted standard, Greif's emissions from the QC Test Station for 2009 and 2010 are 7.7 and 8.95 tpy, respectively. The emission estimates resulting from the formula in Question A are below these actual emissions and should logically result in a decrease in ozone formation – not an increase. For these reasons, the approach suggested in Question A does not seem to truly be a "worst case" analysis.

The AQIA Analysis calculated the emission differential using the following formula:

$$[22.8 \text{ tpy}/(1-.731)]*(.81-.731) = 6.7 \text{ tpy}$$

I selected this approach for the AQIA Analysis for the following reasons. First, I assumed that a worst case analysis would involve a revision to the FESOP eliminating the VOC usage limitation. In that event, compliance with the annual emission limit of 22.8 tpy could still be achieved by complying with the adjusted standard, which has achieved a 73.1% reduction in usage of VOC per lined drum manufactured. Thus, the maximum tons of VOC usage that would need to be controlled if the facility complied with Subpart TT would be approximately 84.8 tpy $[22.8 \text{ tpy}/(1-.731)]$. The emissions differential can then be calculated by multiplying the 84.8 tpy by the differential in the emissions reduction percentages, as reflected in the formula above.

That this method of calculating the worst case emission differential reaches the correct result can be proven in another way. By analyzing the facility's VOC usage per lined drum manufactured, we determined that the average VOC usage before the changes included in the adjusted standard was about [REDACTED] lbs/lined drum (based on data for 2006-2007) and that the average VOC usage after implementing the adjusted standard changes was about [REDACTED] lbs/lined drum (based on data for 2009-2010). Using the average usage after implementing the adjusted standard changes, we can estimate the implicit limit on lined drum production as [REDACTED] per year $(22.8 \text{ tpy} * 2000 \text{ lbs/ton} / [REDACTED] \text{ lbs/lined drum})$. For this estimated maximum lined drum production, the emission differential can then be easily computed as follows:

$$[[REDACTED] * [REDACTED] / 2000] - [[REDACTED] * [REDACTED] * (1-.81) / 2000] = 6.7 \text{ tpy}$$

Based on this alternative calculation, I believe the AQIA Analysis correctly estimated the maximum differential in emissions for a worst case scenario.

Question B: Application of the Scheffe Tables

The second question raised two sub-issues. First, based on the estimated emission differential set forth in Question A, the ratio of NMOC/NOx emissions for the facility would be 9.036, which would indicate use of column 2 of Scheffe Table 2, which applies to ratios of 5.2 to 20.7. The AQIA Analysis had computed a ratio of 33.63, which indicated use of column 1 of Scheffe Table 2, which applies to ratios greater than 20.7. For the reasons explained in the

response to Question A, I believe the value in column 1 applies. But, in this particular instance, which column is used does not make a difference because the values in columns 1 and 2 are the same when NMOC emissions are 50 tpy or less, as they are for the Naperville facility.

The second issue under Question B related to the interpolation step required by the Scheffe approach presented in the AQIA Analysis. The AQIA Analysis did that interpolation assuming a linear relationship in the ozone increment value when emissions are between 0 and 50. Question B analyzed the curves implicit in Scheffe Table 2, noted that the curves were not linear and proposed an alternate formula for the interpolation. But, Question B also recognized that the curves implicit in Scheffe Table 2 did not yield an ozone increment equal to 0 when the emissions differential was 0, which was a condition that obviously should be correct. While the formula suggested in Question B for calculating the interpolation contains more variables, because the values selected for some of those variables is zero, it produces the same result as the interpolation method used in the AQIA Analysis. For example, for the emission differential of 6.7 tpy presented in the AQIA Analysis and confirmed above, both formulas result in an ozone increment of 1.47 ppb [$1.1 \text{ pphm} * 10 \text{ ppb/pphm} * 6.7 \text{ tpy} / 50 \text{ tpy}$, using the AQIA approach, or $((6.7-0) * (1.1-0) * 10 / (50-0) + 0)$, using the formula in Question B.]

I agree with both fundamental points made in Question B: the relationship between NMOC emissions and the ratio of NMOC/NO_x emissions implicit in Scheffe Table 2 is not linear and the ozone increment should obviously be 0 if the emissions differential is 0. The second point essentially recognizes that the ozone increments in Scheffe Table 2 are not well defined below 50 tpy of NMOC emissions. A linear interpolation may overestimate or underestimate the actual increment, but it seems a fair middle point to assume in the absence of real data. Given that the formula for calculating the interpolation in Question B computes the same result as the formula used in the AQIA Analysis, it does not matter which approach is used.

Question C: Impact on Illinois' Ability to Attain the 1-Hour and 8-Hour Ozone NAAQS

Finally Question C asked whether any recalculations of the projected ozone increment would impact the conclusion of the AQIA Analysis. For the reasons explained above, I believe the AQIA Analysis correctly computed a worst case emission differential and ozone increment using the Scheffe method. Accordingly, the simple answer is no. In the AQIA Analysis, I had concluded that the ozone increment calculated there of 1.47 ppb would not cause or contribute to violations of the NAAQS for ozone or delay efforts to attain the NAAQS in a timely manner. If the ozone increment is 0.396 ppb, as suggested by the analysis in Questions A and B, the same conclusions would be reached with an even greater margin.



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INTERNET: Thomas.Dimond@icemiller.com

May 2, 2011

Via Email and First Class Mail

Mr. Michael E. Dura
Illinois Environmental Protection Agency
Michael.Dura@illinois.gov
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

RE: Notice of Incompleteness ("NOI") of Claim to be Exempt from
Public Disclosure
043467AAA-DuPage
Naperville – Grief Packaing LLC

Dear Michael:

I have reviewed your letter dated April 18, 2011 stating that my claim on behalf of Greif Packaging LLC and Greif, Inc. (f/k/a Greif Bros. Corp) (collectively, "Greif") for a part of a record to be exempt from public disclosure is incomplete. This letter will provide additional supporting information for the asserted claim for the record to be exempt from public disclosure. During follow-up telephone conversations, you have indicated that our response to your April 18 letter is due 10 business days following our receipt of the April 18 letter even though the last paragraph of the letter indicates the confidentiality claim will be denied if no response is submitted within 10 business days of the date of that letter. Your letter was not received until April 21, but we are submitting our response today to avoid any issue with the timeliness of our response.

Below, the portions of 2 Ill. Adm. Code Section 1828.401 for which the NOI states my confidential business information claim is deficient are set forth in italics followed by the responsive information in regular type face.

Section 1828.401(b)(2)(B):

- B) If the submittal is not a subsequent version of a public record previously granted exempt status by the Agency, the following information:*
- i) Measures taken by the submitter to prevent disclosure of the public record;*
 - ii) The rights of privacy, if any, that might be an unwarranted invasion of*

EXHIBIT 2

Mr. Michael E. Dura
Environmental Protection Agency
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- personal privacy by disclosure of the public record;*
- iii) *The competitive value, if any, of the public record to the submitter; and*
- iv) *Any other information that will support the claim for exemption from disclosure;*

From the NOI, it is not clear why the Agency found the asserted claim deficient under Section 1828.401(b)(2)(B). As indicated in my March 29 letter, Greif maintains this information and does not disclose it outside the company. This should satisfy subsection (i). And, we also explained that the information would be valuable to Greif's competitors because they could use it to perform analyses of the market and better inform their decisions as to whether or not to enter a market and directly compete with Greif. That would seem to satisfy subpart (iii). Because subpart (ii) seems to address privacy rights established by constitutions or statutes, e.g., a claim as to privacy of personal medical records, rather than business privacy claims, it seemed inapplicable to Greif's claim. And, subpart (iv) is simply a catchall. Moreover, nothing in Section 1828.401(b)(2)(B) suggests that every claimant must submit information addressing every subpart of 1828.401(b)(2)(B). Indeed, that would seem impossible, because a claimant asserting a medical privacy claim would likely have no information to submit on subpart (iii) related to competitive value of the information.

While Greif believes that the March 29 letter adequately satisfied the requirements of Section 1828.401(b)(2)(B), we are providing the additional information below in support of our claim for confidential business information protection for the record at issue. As to subpart (i), the information in the record that is claimed as confidential is stored in electronic systems and databases created and maintained by Greif. Those systems and databases are only accessible through authorized computer terminals (either located at Greif facilities or laptops authorized by Greif) and users must have been granted access and have established a secure password in order to access the systems and databases. Not all Greif employees are granted access to these computer systems. For example, many of the hourly compensated employees do not have access. The information in the record claimed as confidential can be printed on various reports from the systems and databases, however, those reports are also maintained as confidential information within the company. Finally, Greif's employee manuals, including those specifically related to the Naperville facility, inform employees that maintaining the confidentiality of certain information is crucial to the interests and success of Greif and that failure to maintain the confidentiality of that information may result in disciplinary sanctions, including possibly termination. Among the categories of information deemed confidential are computer processes and financial information, both of which encompass the information that Greif has claimed to be confidential in the record at issue. Additionally, all employees that have access to Greif's computer systems must execute a Confidentiality and Proprietary Rights Agreement that requires them to maintain the confidentiality of company

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information, including information on sales and unpublished financial statements and information.

As to subpart (ii), while it seems inapplicable to Greif's claim, we would observe that every company has the right to protect its confidential business information from disclosure to its competitors – or at least there is no general constitutional or statutory prohibition on the protection of such information. As to subpart (iii), we reiterate that Greif's competitors would find the annual production data useful for analyzing the production capabilities of the Naperville facility in the upper Midwest region. That information could be useful to Greif's competitors in making market entry, pricing or other business decisions that could adversely impact the profitability of the Naperville plant.

Taken together, the information submitted above should be sufficient to satisfy the requirements of Section 1828.401(b)(2)(B) and extend exemption from public disclosure to the identified information in the record submitted by Greif.

Section 1828.401(b)(4):

- 4) *If the submitter is currently a party in a proceeding before the Board or a court in which the information is relevant to the issues, the title of the proceeding, docket number, and if applicable, identification of the court.*

My March 29, 2011 letter referenced that the document was submitted in connection with the proceeding *In the matter of Petition of Greif Packaging for an Adjusted Standard, AS11-1*, which is a proceeding before the Illinois Pollution Control Board ("Board") and we thought this satisfied this requirement. To avoid any ambiguity, the full name of that matter is *In the Matter of: Petition of Greif, Inc. and Greif Packaging LLC for an Adjusted Standard from 35 Ill. Adm. Code Part 218, Subpart TT, AS11-1*, which is pending before the Board and in which the Greif entities are parties. While we take no position as to whether the record or the information in it is actually relevant to that proceeding, the above information should fully satisfy Section 1828.401(b)(4).

Section 1828.401(c)(2)(A), (B) & (D):

- c) *The submitter must mark a public record or portions thereof claimed exempt from disclosures as follows:*
 - 2) *Where less than the entire public record is claimed to be exempt from public disclosure:*
 - A) *Mark the public record with the words Public Record Claimed Exempt-in-Part in red ink on the face or front of the public record. If submitted in electronic format, the public record must clearly be marked in bold at the top or front of the public record with the words Public Record Claimed Exempt-in-Part;*
 - B) *Indicate on the face or beginning of the public records which portion of*

Mr. Michael E. Dura
Environmental Protection Agency
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the public record is claimed to be exempt from disclosure;

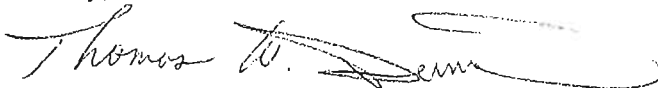
* * *

- D) *Furnish the Agency with a second copy of the public record that is marked in accordance with (A) and (B) of this subsection and from which the portion of the public record that is claimed to be exempt from disclosure is deleted.*

Your letter does not explain in what manner the submitted document was not marked in accordance with Section 1828.401(c)(2)(A), (B) and (D). Nor have we been able to identify any deficiency. The record in question was submitted electronically by email so that the "red ink" requirement of subpart (A) does not apply. In accordance with subpart (A), the record was marked in bold in the upper right hand corner with the words Public Record Claimed Exempt – in Part. The record also identifies by yellow shading which portion of the record is claimed to be exempt from disclosure, which should satisfy subpart (B). Finally, consistent with subpart (D), we provided the Agency with a second copy of the record that is also marked in bold with the words Public Record Claimed Exempt – in Part, that indicates what portion is considered exempt and that omits the information claimed as exempt. This should satisfy subpart (D). After you review the documents submitted again, if it appears they are not marked as required by Section 1828.401(c), please advise me as to the specific deficiency, and we would be happy to correct it.

We appreciate your review of our confidential business information claim for a portion of this record to be exempt from disclosure. If you have any further questions or believe our claim is still deficient in some way, please contact me.

Sincerely,



Thomas W. Dimond

TWD/vw



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

June 1, 2011

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RE: ACCEPTANCE OF CLAIM OF EXEMPTION FROM PUBLIC DISCLOSURE
043467AAA--DuPage
Naperville--Greif Bros Corp
Compliance

Dear Mr. Dimond,

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed your Response to the Notice of Incompleteness of Claim to be Exempt from Public Disclosure, dated May 2, 2011, and received on May 4, 2011, for the **QC Test Process Analysis**, dated March 29, 2011.

This letter will serve as notice pursuant to 2 Ill. Adm. Code Section 1828.404. The **QC Test Process Analysis**, dated March 29, 2011, is exempt in-part pursuant to the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 et seq.)

The Illinois Environmental Protection Agency has determined the **QC Test Process Analysis**, dated March 29, 2011, is exempt in-part from public disclosure pursuant to 2 Ill Adm Sections 1828.202.(a)(1)(H)/(I) and 5 ILCS 140/7(1)(i)/(k).

If you have any questions, comments or concerns, please contact me at the above phone number or email address.

Sincerely,

Michael E. Dura
Legal Investigator
Records Management Unit
Planning and Reporting Section
Bureau of Land

MD: med

cc: Bureau of Air File
Charles Matoesian, DLC

EXHIBIT 3