

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

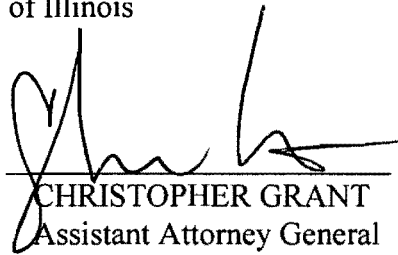
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| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | PCB 04-16 |
| |) | |
| PACKAGING PERSONIFIED, INC., |) | (Enforcement) |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF FILING

PLEASE TAKE NOTICE that on August 27, 2012, Complainant filed its Second Motion to Extend Record Deadline by electronic filing. A copy of Complainant's Motion is attached hereto and herewith served upon you.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

BY:



CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

SECOND MOTION TO EXTEND RECORD DEADLINE

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and respectfully requests that the Illinois Pollution Control Board ("Board") extend the deadline for completion of the record in this matter to a date after December 4, 2012. In support of this Motion, Complainant states as follows:

1. Simultaneously with the filing of this Motion, Complainant has filed a Motion with the Hearing Officer to strike the hearing date of September 24-25, 2012. Complainant's request is based on the need to resolve serious discovery issues through a Motion to Compel. Determination of this Motion will necessitate extending the hearing date, and therefore also extending the date for close of the record.

2. Complainant has diligently attempted to prepare for an early hearing on the issues directed by the Board. Complainant issued written discovery to Respondent on June 28, 2012, which was answered incompletely by Respondent on July 30, 2012. The Parties have attempted, unsuccessfully, to resolve issues related to the discovery Responses. Finally, after reviewing Respondents document production on August 23, 2012, Complainant determined that Respondent's responses to its discovery requests would remain nonresponsive and incomplete,

and that a Motion to Compel would need to be filed before fact and expert witness depositions could be taken. With an existing discovery cutoff of September 6th and hearing set for September 24, 2012, there would be insufficient time for a determination on Complainant's Motion. To ensure Complainant's right to a fair hearing on these issues, the deadline for completion of the record must be extended.

3. Complainant recognizes that this is the second request for an extension. However the first extension was requested so that the Board could make a determination of Complainant's Motion for Reconsideration. In this case, Complainant's request is necessitated by the Respondent's failure to provide complete responses in discovery. It is likely that a resolution of Complainant's Motion to Compel, with possible appeal of the Hearing Officer's ruling to the Board, will take 4-8 weeks. However, pursuant to Section 101.616(c) of the Board Procedural Rules, discovery should be completed within 10 days of hearing; in this case by September 14, 2012. Based on the current status of the discovery disputes, completion of discovery within this time frame will be impossible.

4. The Board has directed the parties to hearing on the following:

- 1) *Did the press 5 tunnel dryer system constitute a "capture system and control device" under 35 Ill. Adm. Code 218.401(c)?*
- 2) *Would press 5 and the tunnel dryer system have accommodated the entire production of both press 4 and press 5 from March 15, 1995 to February 26, 2004? What costs, if any, did Packaging avoid or delay by not shifting press 4's production to press 5 until after press 4 ceased operating in December 2002?*
- 3) *Would a formal stack test of the press 5 tunnel dryer system have demonstrated compliance with the capture and control requirements of 35 Ill. Adm. Code 218.401(c)? What costs, if any, did Packaging avoid or delay by not building a TTE for press 5 and performing a formal stack test of the tunnel dryer system?*

(People v. Packaging Personified, Inc., PCB 04-16, March 1, 2012)

5. These issues are extremely complex, especially with respect to proof that Press No. 5 could have accommodated the production of two presses (as claimed by Respondent) without harming Respondent's business. Most importantly, was it even physically possible for Respondent to run the same volume of business on one press? Evidence already in the record suggests that it was not possible.¹

6. However, Respondent has avoided Complainant's discovery requests related to hours of operation. Similarly, Respondent has failed to provide adequate technical documentation related to the Press 5 tunnel dryer system. A fair hearing on the issues specified by the Board will require that the information requested by Complainant be provided.

7. Complainant respectfully requests that the Board extend the date for close of the record in this matter. Complainant suggests that the Board extend the deadline for at least an additional 60 days, so that all discovery issues may be considered.

WHEREFORE, complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board continue the deadline for the close of record in this Matter from December 4, 2012 for an additional 60 days, or to such date that the Board deems appropriate.


¹ Complainant's Exhibit 13, which has been admitted into evidence, lists average operating hours (not theoretical maximum hours) for Presses No. 4 and 5 at 6000 hours each. However, there are only 8,760 hours in a year. Obviously, if Respondent operated its two presses for a total of 12,000 hours in a particular year, it could not have run its business using only Press No. 5. Clearly this issue merits a full inquiry.

RESPECTFULLY SUBMITTED

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:



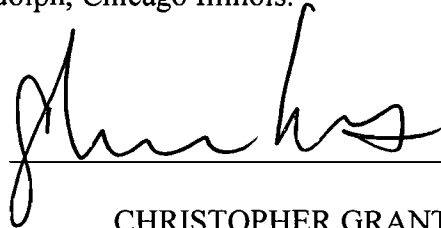
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PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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vs.) PCB 04-16
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PACKAGING PERSONIFIED, INC.,)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

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 27th day of August, 2012, the foregoing Second Motion to Extend Record Deadline, and Notice of Filing, upon the persons listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:

Mr. John Simon
Mr. Roy Harsch
Drinker Biddle Reath
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph
Chicago IL 60601 (by hand delivery)

Mr. John Therriault
Illinois Pollution Control Board
100 W. Randolph
Chicago, IL (by electronic filing)