

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

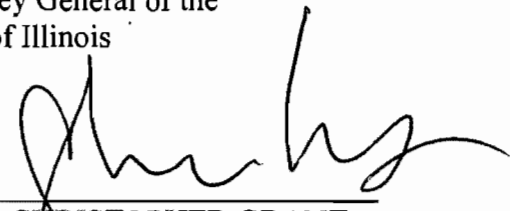
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB 04-16
)	
PACKAGING PERSONIFIED, INC.,)	(Enforcement)
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on August 30, 2012, Complainant filed its Motion to Compel 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

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

MOTION TO COMPEL

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to 35 Ill. Adm. Code 101.616 respectfully requests that the Hearing Officer direct Respondent PACKAGING PERSONIFIED, INC. ("PPI") to provide complete and accurate answers to the Complainant's Interrogatories, and produce all responsive documents, in accordance with Illinois Supreme Court discovery rules and the procedural requirements of the Illinois Pollution Control Board ("Board"). In support thereof, Complainant states as follows:

I. BACKGROUND

The Board has found PPI in violation of the Illinois Environmental Protection Act ("Act") and the Flexographic Printing Regulations, as alleged by Complainant, and has assessed a civil penalty of \$456,313.57. Included in this penalty was \$285,900.00 that the Board found to represent the economic benefit of noncompliance.

On March 1, 2012, the Board granted PPI's Motion to reconsider, and ordered the parties back to hearing on the following issues:

- 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)

The issues on which the Board ordered hearing are new to this case. During the approximately six years between filing of the complaint and hearing, no real inquiry was made into the relative operation of Press No. 4 vs. Press No. 5. There was no reason to do so: there was no dispute that Press No. 4 did operate, uncontrolled and out of compliance, from at least March 15, 1995 through 2002. Regarding Press No. 5's "control system" there was no dispute that PPI did not perform compliance testing in accordance with the requirements of the regulations. As the Board found, compliance could only be demonstrated in accordance with these rules. Thus there was no reason to investigate or test the capture and control efficiency of an 'ink dryer' on Press No.5.

Thus, the Board has first recognized these issues to be relevant nine years after the filing of the case, three years after the first hearing, and seventeen years after the initial date of noncompliance. Although Complainant continues to disagree strongly with the Board's implied finding that hypothetical non-operation can legally be considered a 'compliance option', Complainant will participate in hearing on these issues. But a fair hearing cannot be held unless

the Respondent provides all relevant information in its possession and control. And, if it has no knowledge, it must so state.

On June 28, 2012, Complainant served counsel for Respondent with its Interrogatories and Request for Production by first class mail (*Exhibit A*). Respondent served responses on July 30, 2012 (*Exhibit B*). The responses are deficient in that they are incomplete, fail to respond to the subject matter of the Interrogatories, and do not comply with the requirements of the Supreme Court and Board discovery rules.

On August 8, 2012, Complainant sent a letter to Respondent's counsel pursuant to Supreme Court Rule 201(k), explaining its objections to discovery responses in detail (*Exhibit C*). Since that date, counsel for the parties have spoken on several occasions in an attempt to resolve discovery issues. But Respondent has failed to adequately supplement its responses. Finally, on August 23, 2012, the Parties met at PPI's facility to review documents. However, very few responsive documents were produced, certainly only a small fraction of those requested. And no technical documents related to Press No. 5's tunnel dryer were produced. Complainant believes that the Hearing Officer's intervention is now required to obtain appropriate discovery responses.

II. DISCOVERY STANDARDS

The Board's Procedural Rules allow discovery of: "All relevant information and information calculated to lead to relevant information...." 35 Ill. Adm. Code 101.616.

Supreme Court Rule 201 provides:

- 1) *Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party....

Discovery is intended to be a mechanism for the ascertainment of truth, for the purpose of promoting either a fair settlement or a fair trial. *Ostendorf v. International Harvester Company*, 89 Ill. 2d 273, 282 (1982). “Fractional disclosure” is improper. *Id.* Where, as in this case, an officer or employee of a corporation provides a response to discovery on behalf of the corporation, he must take reasonable steps to search the “corporate memory” by investigating the contents of corporate records, and attempting to ascertain the knowledge of other corporate agents. *Campen v. Executive House Hotel*, 105 Ill. App. 3d 576, 587 (1st Dist 1982).

III. MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES

Complainant served its written discovery 63 days ago. However, Respondent has still failed to adequately respond. Specific to the Interrogatories, Respondent has avoided responding to Interrogatories related to actual utilization of Presses No. 4 and 5 during the period set by the Board. This information is highly relevant as it bears directly on Board issue No. 2, i.e. “*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?*”

Hypothetical operation of only Press No. 5 raises many relevant issues. Could they have handled the same customer commitments running only one press? Would customer lead times have allowed them to defer delivery time because of operation of only one press? What if the one press had maintenance issues and unexpected down time? Most importantly, was it physically possible for Respondent to run the same volume of business on one press? Evidence already in the record indicates that it was not possible.

Complainant’s Exhibit 13, which has been admitted into evidence, admits average operating hours (not theoretical maximum hours) for Presses No 4 and 5 at 6,000 hours each. However, there are only 8,760 hours in a year. Obviously, if Respondent operated its two

presses for 12,000 hours in a particular year, it could not have run its business using only Press No. 5.

Respondent avoids answering any question regarding utilization:

Interrogatory No. 12

For each month from March 15, 1995 through December 31, 2002, state the number of hours that Press No. 4 operated.

ANSWER: *Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.*

Interrogatory No. 13

For each month from March 15, 1995 through February 9, 2004, state the number of hours that Press No. 5 operated.

ANSWER: *Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.*

(See: Exhibit B, p.7)

PPI's answers to Interrogatories No.12 and 13 are completely nonresponsive. Complainant did not ask for operating records. Its Interrogatories sought specific monthly operating hours throughout the relevant period. If PPI knows this information, or can derive it from its own records through a diligent search, the discovery rules require it to do so. If it does not know its operating hours, it must so state. Complainant does not have the obligation to search various records, whose contents and meanings are best known to the Company that

generated them, to get a straight answer to a simple question. PPI's response indicates that it reserves the right to provide surprise testimony on this issue, without first disclosing the information to Complainant. However, Rule 213(e) does not give PPI the right to avoid answering a direct question. In any event, when Complainant viewed PPI's document production on August 23, 2012, no records related to "annual costs of raw materials or sales records" were produced. PPI's complete production, covering a period of nine years, consisted of 23 pages, plus three binders of permits and miscellaneous documents dated between 2003 and 2004. Nothing at all was produced for the period from 1995 through 2001.

Also, in Paragraph d. of the instructions to the Interrogatory, Complainant directs PPI, as follows:

- d. If you lack information necessary to answer any interrogatory completely, state the following:
 - i. The responsive information currently available;
 - ii. The responsive information currently unavailable;
 - iii. Efforts you have made and intend to make to obtain the information currently available; and
 - iv. When you expect to receive the currently unavailable information.

Exhibit A, p. 2

Pursuant to this paragraph, and PPI's obligations to answer discovery in good faith, PPI was obligated to diligently investigate, and provide whatever information, whether by estimate, memory, experience, in response to the question asked.

PPI provided the identical response to Interrogatories number 3 and 4 (regarding quantities of substrate printed), 5 and 6 (regarding ink usage), and 8 and 9 (regarding printing business during the relevant period). All are relevant to the issue directed to hearing by the Board. The Hearing Officer must order PPI to supplement its responses with complete and

accurate information. PPI must be required to commit to an answer on these relevant matters. If the claimed "lack of production records", equates to a lack of knowledge, it must so state.

IV. MOTION TO COMPEL PRODUCTION OF DOCUMENTS

As previously noted, PPI has produced a total of 23 pages of documents, in addition to compliance binders for 2003 and 2004. However, the relevant period began on March 15, 1995. Compliant cannot believe that PPI has made a good faith search for documents, despite its obligations under the discovery rules.

PPI's response is particularly lacking in two respects: first it has produced no documents related to the "tunnel drying system", and almost nothing related to Press No. 5. This information is vital because of the Boards direction that hearing be held on "*Did the press 5 tunnel dryer system¹⁴ constitute a "capture system and control device" under 35 Ill. Adm. Code 218.401(c)? and "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)?* Responsive information is also absolutely necessary before Complainant's expert can develop his opinion for hearing.

Counsel for Respondent recently advised that manuals and other responsive information exists, but, as of the date of this Motion they have not yet been produced. Respondent has had 63 days to search for and produce this information. The hearing officer must now direct full and complete production, along with a certification that such production is complete. The information must relate to the following requests:

4. *All documents relating to Press No. 5, including sales and promotional materials*

provided by the Press manufacturer or supplier, blueprints and other technical drawings, maintenance records, diagrams, and operating logs.

5. *All documents relating to maintenance, modification, or repair of Press No. 5 from the date of its installation thorough its 2004 connection to the RCO control device.*
11. *All documents referencing or relating to the "tunnel dryer" system on Press No. 5.*
See: *Exhibit A, p.8*

In addition, Respondent has refused to produce its tax returns for the relevant period (Exhibit B, p.9). Respondent's claim that the tax returns are not relevant is patently incorrect. First, its own expert, Richard Trzupsek, relies on PPI's revenues during the period from 1995 through 2004 in his written opinion, even citing each year's annual sales. Since PPI has brought this issue into the case, Complainant is now entitled to the most reliable verification of revenues, i.e. Respondent's complete tax returns. Also, the Board has specifically directed that the Parties explore the economic impact of only running Press No. 5, and the avoided costs. PPI ran two presses for 8 of the 9 years relevant to this hearing. Complainant is entitled to explore the affect on PPI's revenues and profits of running one or both presses. This is best accomplished by review of the full tax returns.

WHEREFORE, complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Hearing Officer:

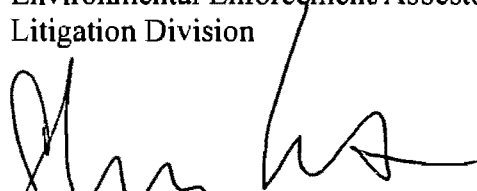
1. Order the Respondent to investigate and provide full and responsive answers to Interrogatories No. 3, 4, 5, 6, 8, 9, 12, and 13;
2. Order the Respondent to search for and produce all documents responsive to Production Requests No. 4, 5, 10, and 11;
3. Order such other relief as the Hearing Officer deems appropriate.

RESPECTFULLY SUBMITTED

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

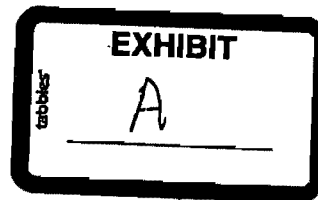
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:



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

Dated: August 30, 2012



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 28, 2012

Mr. Roy Harsch
Mr. John Simon
Drinker Biddle & Reath
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1698

Re: Attached Discovery Requests, *People v. Packaging Personified, Inc.*, PCB 04-16

Dear Roy/John:

Attached are the State's Interrogatories and Request for Production of Documents. Please arrange for sworn answers and responsive documents to be served on the undersigned within 28 days of receipt of these requests.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grant".

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington, #1800
Chicago, Illinois 60602
(312) 814-5388
cgrant@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

INTERROGATORIES AND REQUEST FOR THE PRODUCTION OF DOCUMENTS TO RESPONDENT PACKAGING PERSONIFIED, INC.

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to 35 Ill. Adm. Code 101.616, and Supreme Court Rules 213 and 214, serves Respondent, PACKAGING PERSONIFIED INC., the following Interrogatories and Request for Production of Documents.

The Complainant requests that Respondent file a sworn answer or objection to each interrogatory within 28 days of service, or as otherwise directed by the Hearing Officer. Documents requested shall be produced for inspection and copying in the offices of the Environmental Bureau, 69 W. Washington Street, Suite 1800, Chicago, Illinois.

If any of the following interrogatories cannot be answered in full, please so state, and answer to the fullest extent possible.

Instructions

- I. **Interrogatories.**
 - a. In answering each interrogatory, identify each document, person, communication or meeting which relates to, corroborates, or in any way

forms the basis for the answer given.

- b. Pursuant to Supreme Court Rule 213 and 35 Ill. Adm. Code 101.616, Respondent is requested to serve upon Complainant corrected, supplemented or augmented answers hereto, document or other forms of information from whatever source, which arguably tends to show that Respondent's prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.
- c. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed "ambiguous" and the construction chosen or used in responding to the interrogatory.
- d. If you lack information necessary to answer any interrogatory completely, state the following:
 - i. The responsive information currently available;
 - ii. The responsive information currently unavailable;
 - iii. Efforts you have made and intend to make to obtain the information currently available; and
 - iv. When you expect to receive the currently unavailable information.
- e. If dates are requested in these interrogatories, the exact date should be given if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given and labeled as such.
- f. In construing these interrogatories:
 - i. The singular form and plural form in these interrogatories shall be construed interchangeably so as to elicit any facts as outside their scope;
 - ii. A masculine, feminine or neutral pronoun shall not exclude the other genders; and
 - iii. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the interrogatory all responses which might otherwise be construed as outside its scope.

2. Production of Documents.

- a. If any requested document was in Respondent's possession or subject to Respondent's control, but is not now in Respondent's control, or is no longer in existence, as to each such document state the following:
 - i. Whether the document:
 - A. Is missing or lost,
 - B. Has been destroyed,
 - C. Has been transferred to others, or
 - D. Has been otherwise disposed of;
 - ii. The circumstances surrounding the document's disposition;
 - iii. Any authorization for the disposition; and
 - iv. If known, the present location and custodian of the document.
- b. Each document request shall be construed to include any document responsive to the request which is later discovered by Respondent.

Definitions

1. "Respondent" means Packaging Personified, Inc. and anyone acting as its agent, employee, or on its behalf.
2. "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, or any other legal entity or their legal representative, agent or assigns.
3. As used herein, "Site" means the land, buildings and equipment owned and/or operated by Respondent at 246 Kehoe Boulevard, Carol Stream Illinois.
4. When used in reference to a natural and/or corporate person herein, to "identify" means to state his or her full name, present and last known address, and present or last known business affiliation. When used in reference to a document herein, to "identify" means to state its date, author, addresser, addressee, type (e.g., letter, memorandum, invoice, map), or some other means of identification, and its present location and custodian. If the document was, but no longer is, in a Respondent's possession or control, state the disposition made of it and its present location and custodian.
5. As used herein, "document" means the original and any non-identical copy of any communication or other transgression of information that has been reduced by any means into tangible form or medium, including written, electronic, magnetic or photographic.

6. "Relating to" or "related to" shall mean anything which directly or indirectly concerns, consists of, pertains to, reflects, evidences, mentions, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally, logically or factually connected with, proves, disproves, or tends to prove or disprove the stated matter.

7. All terms not specifically defined herein shall have their logical, ordinary meaning, unless such terms are defined in the Act or the regulations promulgated thereunder, in which case the appropriate or regulatory definitions shall apply.

INTERROGATORIES

Interrogatory No. 1

Please identify each and every fact witness who may be called by Respondent as a witness in any hearing in this matter, and state his or her area of knowledge.

ANSWER:

Interrogatory No. 2

Please identify each and every opinion witness who may be called by Respondent as a witness at any hearing in this matter, and state:

- a) his or her area of knowledge;
- b) the subject matter on which the opinion witness will testify;
- c) the conclusions and opinions of the opinion witness and the bases therefore;
- d) the qualifications of the opinion witness;

ANSWER:

Interrogatory No.3

For each month from January 1, 1995 through December 31, 2002, identify the quantity of substrate printed on Press No. 4.

ANSWER:

Interrogatory No.4

For each month from January 1, 1995 through December February 1, 2004, identify the quantity of substrate printed on Press No. 5.

ANSWER:

Interrogatory No. 5

For each month from January 1, 1995 through December 31, 2002, identify the volume, VOM content, and name of each printing ink used on Press No. 4.

ANSWER:

Interrogatory No. 6

For each month from March 1, 1995 through February 1, 2004, identify the volume, VOM content, and name of each printing ink used on Press No. 5.

ANSWER:

Interrogatory No. 7

Identify each employee who worked for Respondent from March 15, 1995 through February 1, 2004, and state:

- a. The responsibilities of the employee;
- b. The shift to which the employee was assigned;
- c. Starting and ending dates of employment for the employee; and
- b. Total compensation paid to the employee, including hourly rate or salary, benefits, overtime, and government required employee payments such as unemployment and workers compensation cost.

ANSWER:

Interrogatory No. 8

Identify each printing job run on Press No. 4 during the period March 15, 1995 through December 31, 2002, and state:

- a. the date the order was received from the printing customer;
- b. the date delivery of the job was promised;
- c. the date the finished job was delivered to the printing customer;
- d. the dollar value of the labor required to complete the printing order;
- e. the gross revenue realized by Packaging Personified Inc. from the printing job;
- f. the net profit realized by Packaging Personified, Inc. from the printing job.

ANSWER:

Interrogatory No. 9

Identify each printing job run on Press No. 5 during the period March 15, 1995 through February 1, 2004, and state:

- a. the date the order was received from the printing customer;
- b. the date delivery of the job was promised;
- c. the date the finished job was delivered to the printing customer
- d. the dollar value of the labor required to complete the printing order.
- e. the gross revenue realized by Packaging Personified Inc. from the printing job.
- f. the net profit realized by Packaging Personified, Inc. from the printing job.

ANSWER:

Interrogatory No. 10.

Describe the procedures required to switch Presses 4 and 5 from one printing job to another, and state the amount of time required for such a changeover.

ANSWER:

Interrogatory No. 11.

Identify all persons, including vendors, contractors, employees or agents involved with or responsible for the maintenance and repair of Presses No. 4 and 5 from March 15, 1995 through February 9, 2004.

ANSWER:

Interrogatory No. 12

For each month from March 15, 1995 through December 31, 2002, state the number of hours that Press No. 4 operated.

ANSWER:

Interrogatory No. 13

For each month from March 15, 1995 through February 9, 2004, state the number of hours that Press No. 5 operated.

ANSWER:

Interrogatory No. 14

Identify each modification, upgrade, or repair made to Press No. 5 between March 15, 1995 and February 9, 2004

ANSWER:

Interrogatory No. 15

With regard to Packaging Personified Inc, for each year from 1995 through 2004, please identify:

- a. Each owner of the company, and the share of ownership held;
- b. The total compensation received by each owner of the company for each year from 1995 through 2004; and
- c. Whether the company was classified by the Internal Revenue Service as a subchapter C or subchapter S corporation for the relevant tax year.

ANSWER:

Interrogatory No. 16

State each fact that supports Packaging Personified Inc.'s claim that the "tunnel dryer" system on Press No. 5 constitutes a VOM capture and control device.

ANSWER:

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

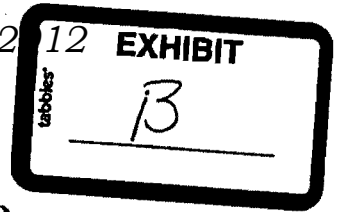
1. All documents relating to the purchase and operation of Press No. 4, including sales and promotional materials provided by the Press manufacturer or supplier, blueprints and other technical drawings, maintenance records, diagrams, and operating logs.
2. All documents relating to maintenance, modification, or repair of Press No. 4 from the date of installation through December 31, 2002.

3. Daily operating logs or records for Press No. 4 from March 15, 1995 through December 31, 2002.
4. All documents relating to Press No. 5, including sales and promotional materials provided by the Press manufacturer or supplier, blueprints and other technical drawings, maintenance records, diagrams, and operating logs.
5. All documents relating to maintenance, modification, or repair of Press No. 5 from the date of its installation through its 2004 connection to the RCO control device.
6. Daily operating logs and records for Press No. 5 from March 15, 1995 through February 9, 2004.
7. All documents relating to Packaging Personified, Inc.'s business relationship with Huff & Huff Incorporated, including letters, reports, electronic correspondence, invoices and checks.
8. All documents relating to Packaging Personified, Inc.'s business relationship with Mostardi Platt Environmental, including letters, reports, electronic correspondence, invoices and checks.
9. All documents not produced in response to Requests 5 and 6 above, relating to Packaging Personified, Inc.'s business relationship with Richard Trzupsek, including letters, reports, electronic correspondence, invoices and checks.
10. Packaging Personified, Inc.'s federal tax returns, including all schedules, for the years 1995 through 2004.
11. All documents referencing or relating to the "tunnel dryer" system on Press No. 5.

BY: 

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, Illinois 60602
(312) 814-5388

Dated: June 28, 2012



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
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) (Enforcement - Air)
PACKAGING PERSONIFIED, INC., an)
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Respondent.)

RESPONDENT PACKAGING PERSONIFIED, INC.'S ANSWERS TO COMPLAINANT'S INTERROGATORIES AND REQUEST FOR THE PRODUCTION OF DOCUMENTS

Respondent, Packaging Personified, Inc., by its attorneys, Drinker Biddle & Reath LLP, responds and objects to Complainant's Interrogatories and Request for Production as follows:

INTRODUCTORY STATEMENT

- 1. Documents, as described and subject to the objections below, will be available for inspection and copying at the offices of Packaging Personified, Inc., at a mutually convenient time agreed to by the parties.
2. Packaging Personified expressly reserves the right at any time to supplement or amend the answers provided herein, but Packaging Personified undertakes no obligation to do so beyond the requirements of 35 Illinois Administrative Code 101.616(h).

GENERAL OBJECTIONS

- 1. Packaging Personified objects to these Interrogatories and Document Requests because they are duplicative of Interrogatories and Document Requests already served on Packaging and to which Packaging already responded.
2. Packaging Personified objects to these Interrogatories and Document Requests because they vastly exceed the narrow scope of the factual issues relevant to the measurement of

the economic benefit, if any, to Packaging which is the only evidentiary issue for the supplemental hearing in this matter.

3. Packaging Personified objects to these Interrogatories and Document Requests as they are inconsistent with or seek to impose requirements beyond the scope of the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules, and Illinois Pollution Control Board regarding discovery.

4. Packaging Personified objects to these Interrogatories and Document Requests as they seek information that is protected from disclosure by privilege or other grounds for withholding information from discovery including, but not limited to, the attorney-client privilege, the work product doctrine or other privilege.

5. Packaging Personified objects to these Interrogatories and Document Requests as they seek information that is highly confidential, personal, proprietary, trade secrets, or otherwise commercially sensitive.

6. Packaging Personified objects to these Interrogatories and Document Requests as they are overly broad, vague, ambiguous, unduly burdensome, and not relevant or reasonably calculated to lead to the discovery of admissible evidence.

7. Packaging Personified objects to these Interrogatories and Document Requests as they seek documents and information equally available to the State of Illinois as to Packaging Personified.

8. Packaging Personified's responses to these Interrogatories and Document Requests are made without waiver and with the express reservation of:

- (a) all questions as to the competence, relevance, materiality and admissibility as evidence for any purpose of the information or documents, or the subject matter

thereof, in any aspect of this or any other action, arbitration, proceeding or investigation;

- (b) the right to object on any ground to the use of any such documents or information, or the subject matter thereof, in any aspect of this or any other action, arbitration, proceeding or investigation;
- (c) the right to object at any time to a demand for any further response to this or any other interrogatories, request to admit or request for the production of documents.

9. Each of the following responses is made subject to and without waiver of the foregoing General Objections.

ANSWERS TO INTERROGATORIES

Interrogatory No. 1

Please identify each and every fact witness who may be called by Respondent as a witness in any hearing in this matter, and state his or her area of knowledge.

ANSWER: Dominic Imburgia and Joseph Imburgia have knowledge of the business of Packaging Personified during the 1995-2004 time period relevant to the supplemental hearing.

Interrogatory No. 2

Please identify each and every opinion witness who may be called by Respondent as a witness at any hearing in this matter, and state:

- a) his or her area of knowledge;
- b) the subject matter on which the opinion witness will testify;
- c) the conclusions and opinions of the opinion witness and the bases therefore;
- d) the qualifications of the opinion witness;

ANSWER: Richard Trzupsek and Chris McClure. Packaging will supplement its response to this Interrogatory on August 9, 2012 per the July 3, 2012 Scheduling Order.

Interrogatory No. 3

For each month from January 1, 1995 through December 31, 2002, identify the quantity of substrate printed on Press No. 4.

ANSWER: Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.

Interrogatory No. 4

For each month from January 1, 1995 through December February 1, 2004, identify the quantity of substrate printed on Press No. 5.

ANSWER: Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.

Interrogatory No. 5

For each month from January 1, 1995 through December 31, 2002, identify the volume, VOM content, and name of each printing ink used on Press No. 4.

ANSWER: Packaging does not have the ink purchasing records for the period covered by this interrogatory. Packaging continues to use the same inks it used during the time period covered by this interrogatory. The VOM content of these same inks has varied little, if at all. The volume of ink Packaging used in the years covered by this Interrogatory was, however, much lower, particularly in the earlier years when its volume of business was much lower.

Interrogatory No. 6

For each month from March 1, 1995 through February 1, 2004, identify the volume, VOM content, and name of each printing ink used on Press No. 5.

ANSWER: Packaging does not have the ink purchasing records for the period covered by this interrogatory. Packaging continues to use the same inks it used during the time period covered by this interrogatory. The VOM content of these same inks has varied little, if at all. The volume of ink Packaging used in the years covered by this Interrogatory was, however, much lower, particularly in the earlier years when its volume of business was much lower.

Interrogatory No. 7

Identify each employee who worked for Respondent from March 15, 1995 through February 1, 2004, and state:

- a. The responsibilities of the employee;
- b. The shift to which the employee was assigned;
- c. Starting and ending dates of employment for the employee; and
- b. Total compensation paid to the employee, including hourly rate or salary, benefits, overtime, and government required employee payments such as unemployment and workers compensation cost.

ANSWER: Packaging objects to this Interrogatory. Packaging actually saved money on personnel when it shut down Press 4 in 2002 and shifted production to Press 5. Nevertheless, Packaging is not seeking to offset any economic benefit with a claim of cost savings by virtue of compliance. Thus, information responsive to this Interrogatory could have no possible relevance to the measure of economic benefit, if any, at issue in the supplemental hearing.

Interrogatory No. 8

Identify each printing job run on Press No. 4 during the period March 15, 1995 through December 31, 2002, and state:

- a. the date the order was received from the printing customer;
- b. the date delivery of the job was promised;
- c. the date the finished job was delivered to the printing customer;
- d. the dollar value of the labor required to complete the printing order;
- e. the gross revenue realized by Packaging Personified Inc. from the printing job;
- f. the net profit realized by Packaging Personified, Inc. from the printing job.

ANSWER: Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.

Interrogatory No. 9

Identify each printing job run on Press No. 5 during the period March 15, 1995 through February 1, 2004, and state:

- a. the date the order was received from the printing customer;
- b. the date delivery of the job was promised;
- c. the date the finished job was delivered to the printing customer
- d. the dollar value of the labor required to complete the printing order.
- e. the gross revenue realized by Packaging Personified Inc. from the printing job.
- f. the net profit realized by Packaging Personified, Inc. from the printing job.

ANSWER: Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.

Interrogatory No. 10

Describe the procedures required to switch Presses 4 and 5 from one printing job to another, and state the amount of time required for such a changeover.

ANSWER: It took no time to change over production from Press 4 to Press 5. Set up time on Press 5 was much shorter than set up time on Press 4. Press 5 printed approximately 30% faster than Press 4.

Interrogatory No. 11

Identify all persons, including vendors, contractors, employees or agents involved with or responsible for the maintenance and repair of Presses No. 4 and 5 from March 15, 1995 through February 9, 2004.

ANSWER: Gary Peletier with a last known telephone number (630) 918-1038

Interrogatory No. 12

For each month from March 15, 1995 through December 31, 2002, state the number of hours that Press No. 4 operated.

ANSWER: Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.

Interrogatory No. 13

For each month from March 15, 1995 through February 9, 2004, state the number of hours that Press No. 5 operated.

ANSWER: Packaging does not have production records for the period covered by this Interrogatory. Pursuant to Illinois Supreme Court Rule 213(e), responsive information may be found in Packaging records reflecting annual costs for materials used in production and annual sales figures, which are available for review and copying.

Interrogatory No. 14

Identify each modification, upgrade, or repair made to Press No. 5 between March 15, 1995 and February 9, 2004

ANSWER: There were no modifications, upgrades or major repairs to Press No. 5 during this time period.

Interrogatory No. 15

With regard to Packaging Personified Inc, for each year from 1995 through 2004, please identify:

- a. Each owner of the company, and the share of ownership held;
- b. The total compensation received by each owner of the company for each year from 1995 through 2004; and
- c. Whether the company was classified by the Internal Revenue Service as a subchapter C or subchapter S corporation for the relevant tax year.

- ANSWER:** a. Dominic Imburgia 70%; Phylis Muccianti 30%.
- b. Objection to the relevance of this confidential personal information.
- c. Subchapter C (1995-1999); Subchapter S (2000-2004).

Interrogatory No. 16

State each fact that supports Packaging Personified Inc.'s claim that the "tunnel dryer" system on Press No. 5 constitutes a VOM capture and control device.

ANSWER: These facts are included in the Expert Report and Testimony of Richard Trzupsek at the hearing in this matter and will be supplemented by his Supplemental Report on August 9, 2012. Further answering pursuant to Supreme Court Rule 213(e), responsive information may be gathered from the documents produced by Packaging.

RESPONSES TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. All documents relating to the purchase and operation of Press No. 4, including sales and promotional materials provided by the Press manufacturer or supplier, blueprints and other technical drawings, maintenance records, diagrams, and operating logs.

ANSWER: Packaging does not have operating logs or maintenance records for Press 4 for the relevant 1995-2004 time period. Press 4 manufacturer materials in the possession of Packaging are available for inspection and copying.

2. All documents relating to maintenance, modification, or repair of Press No. 4 from the date of installation through December 31, 2002.

ANSWER: Packaging does not have any responsive documents.

3. Daily operating logs or records for Press No. 4 from March 15, 1995 through December 31, 2002.

ANSWER: Packaging does not have documents responsive to this Request.

4. All documents relating to Press No. 5, including sales and promotional materials provided by the Press manufacturer or supplier, blueprints and other technical drawings, maintenance records, diagrams, and operating logs.

ANSWER: Packaging does not have operating logs or maintenance records for Press 5 for the relevant 1995-2004 time period. Press 5 manufacturer materials in the possession of Packaging are available for inspection and copying.

5. All documents relating to maintenance, modification, or repair of Press No. 5 from the date of its installation through its 2004 connection to the RCO control device.

ANSWER: Packaging does not have records responsive to this Request.

6. Daily operating logs and records for Press No. 5 from March 15, 1995 through February 9, 2004.

ANSWER: Packaging does not have records responsive to this Request.

7. All documents relating to Packaging Personified, Inc.'s business relationship with Huff & Huff Incorporated, including letters, reports, electronic correspondence, invoices and checks.

ANSWER: Records responsive to this Request in Packaging's possession and control are available for review and copying.

8. All documents relating to Packaging Personified, Inc.'s business relationship with Mostardi Platt Environmental, including letters, reports, electronic correspondence, invoices and checks.

ANSWER: Records responsive to this Request in Packaging's possession and control are available for review and copying.

9. All documents not produced in response to Requests 5 and 6 above, relating to Packaging Personified, Inc.'s business relationship with Richard Trzupsek, including letters, reports, electronic correspondence, invoices and checks.

ANSWER: Packaging has no records responsive for this Request.

10. Packaging Personified, Inc.'s federal tax returns, including all schedules, for the years 1995 through 2004.

ANSWER: Packaging objects to this Request based upon the lack of relevance of its federal tax returns to the matter at issue in the supplemental hearing.

11. All documents referencing or relating to the "tunnel dryer" system on Press No. 5.

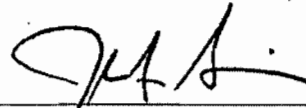
ANSWER: Documents responsive to this Request in the possession and control of Packaging are available for review and copying.

Dated: July 30, 2012

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

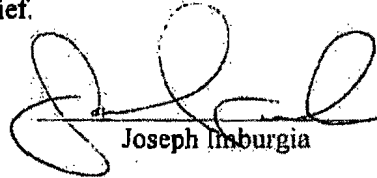
BY: _____


One of Its Attorneys

Roy M. Harsch, Esq.
John A. Simon, Esq.
Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

VERIFICATION

Pursuant to Illinois Supreme Court Rule 213 and 214, and under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that he has read the foregoing Respondent Packaging Personified, Inc.'s Answers to Complainant's Interrogatories and Request for the Production of Documents; and that, subject to the objections interposed by counsel, the responses given therein are true, correct, and complete, to the best of his knowledge, information and belief.


 7-30-2012
Joseph Imburgia

CERTIFICATE OF SERVICE

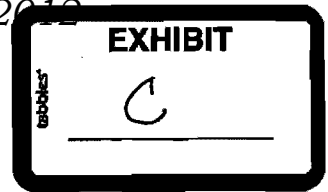
The undersigned certifies that a copy of the foregoing **Respondent Packaging Personified, Inc.'s Answers to Complainant's Interrogatories and Request for the Production of Documents** was served upon the parties below by electronic mail and U.S. First Class Mail on July 30, 2012:

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
lcunningham@atg.state.il.us

Christopher J. Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
cgrant@atg.state.il.us



John A. Simon



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
August 8, 2012

Lisa Madigan
ATTORNEY GENERAL

Mr. John A. Simon
Mr. Roy Harsch
Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1698
By email and first class mail

Re: Packaging Personified, Inc., PCB 04-16, request for complete discovery responses

Dear John:

We have received Packaging Personified, Inc.'s ("PPI's") responses to the State's First Set of Interrogatories and Request for Production of documents. The responses are incomplete or non-responsive and do not comply with Illinois Pollution Control Board ("Board") or Illinois Supreme Court discovery provisions. This letter is sent pursuant to Illinois Supreme Court Rule 201(k) and is intended to resolve a discovery-related dispute. We request that complete and responsive answers to interrogatories be provided to us no later than seven (7) days from the date of this letter. In particular, we request that the following issues be addressed:

General Objections:

In General Objection No. 2, PPI objects on the basis that the requests "vastly exceed the narrow scope of the factual issues relevant to the measurement of the economic benefit". We disagree that the scope of factual issues are narrow. In fact, the Board has directed us to hearing on issues far broader than those in the original hearing. This is because the Board has directed hearing, in part, on the following:

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?*
[March 1, 2012 Order, p.17]

Thus, the Board has directed an examination of PPI's printing business for almost nine years, between 1995 and 2004. For most of this period, i.e. until December, 2002, PPI operated

Mr. John A. Simon

August 8, 2012

Page 2

two solvent based printing presses. Whatever business it was able to obtain and service throughout this period was printed on these two presses. PPI now represents that it did not need both presses. Therefore all issues regarding PPI's ability to handle all the business it took from 1995 through 2002 is relevant. These issues include, but are certainly not limited to, production capacity of each printing press, PPI's ability to handle printing orders within the lead times demanded by customers, the cost of labor to run additional shifts, loss of business due to unexpected downtime on one solvent-based press instead of two, additional maintenance cost, and other business considerations. While these factors may have not been relevant to hearing on PPI's regulatory violations, they are completely within the scope of the issues for hearing, as directed by the Board. And this information is absolutely necessary to the State's case.

In General Objection No. 5, PPI objects to information that is "highly confidential, personal, proprietary, trade secrets, or otherwise commercially sensitive." Without more, PPI cannot withhold information from disclosure on this basis. Trade secrets and proprietary information are protected from disclosure if appropriately claimed under Section 7.1 of the Environmental Protection Act, 415 ILCS 5/7.1. "Personal information" is relevant if it relates to the potential bias of a testifying witness, and may not be withheld.

In General Objection No.7, PPI objects to production of "documents and information equally available to the State of Illinois. This non-specific objection is improper. The State seeks information and documents in the possession of the Respondent. Without providing any basis of withholding documents or information the "may" be available to the State, PPI may not circumvent well established discovery procedures, and must produce responsive documents and information.

The State also has the following specific objections to PPI's Interrogatory responses, and demands that the responses be supplemented with complete and accurate information:

Response to Interrogatories No. 3 and 4

In this Interrogatory, the State seeks specific information regarding the amount of substrate printed. In its response, PPI states that it does not have "production records" for any month between January 1, 1995 and February 1, 2004, but then says that responsive information may be found in other records in its possession. Pursuant to the Board and Supreme Court discovery rules, PPI is under an obligation to go through these records and provide a response to Interrogatories No. 3 and 4. The State is under no obligation to search through, for example, "annual sales figures" and answer this interrogatory itself. If PPI, after a diligent inquiry, has no idea how much raw material it used during this nine year period, it must so state, under oath.

Mr. John A. Simon
August 8, 2012
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The Responses to Interrogatories No. 3 and 4 must be supplemented with responsive information, or contain a definite denial of knowledge.

Response to Interrogatories No. 5 and 6

PPI's response notes that it does not have ink *purchasing* records, while the Interrogatories request monthly *usage* records. Please supplement this response. If PPI, after a diligent inquiry, determines that it has neither, please so state. Also, PPI has failed to provide any of the requested VOM information. The statement "the VOM content of these same inks has varied little, if at all" is non-responsive. PPI is under an obligation to investigate the VOM content of the inks used at their facility throughout the relevant period and provide this information in a supplemental response.

Response to Interrogatory No. 7

PPI fails to provide any of the requested information, merely asserting the conclusion that it "actually saved money when it shut down press No. 4." The State understands that PPI will make this claim, and therefore will require that PPI prove it. Therefore, labor costs, number of employees, shift differentials, and all other requested information are completely relevant to PPI's "hypothetical non-operation" defense. The requested information must be provided in a **supplemental response**.

Response to Interrogatories No.8 and 9

PPI states that it does not have production records for the period March 15, 1995 through February 1, 2004, but then proceeds to state that information "may be found in Packaging records." If so, PPI is bound under the discovery rules to go through these records and provide the specific facts requested by the State. Moreover, Interrogatory No. 8 does not specifically request "production records", but information related to business accepted and handled by PPI during the period when it was actually operating two presses. The Board has directed the parties to hearing on the issue of whether or not PPI could hypothetically have run its business with only one press, and if so, what economic impact this hypothetically would have had. Without question, losing one of the two presses used to satisfy PPI's solvent ink customers business could affect lead times, and the type of business that PPI could have accepted during this period. Information on which orders were handled by which presses during which months directly relates to PPI's ability to handle the same business, with no impact to sales or profitability of PPI, during this nine year period. The State is entitled to explore this relevant area, and PPI is

Mr. John A. Simon
August 8, 2012
Page 4

obligated to either produce all information requested, or concede that it has no business records whatsoever for this period. The Responses to Interrogatories 8 and 9 must be supplemented.

Response to Interrogatory No. 10

PPI's response to Interrogatory No. 10 is totally non-responsive, and must be supplemented with, as requested, a description of the procedure for switching Press No. 4 from one printing job to the next printing job on Press No. 4, and also a description of the procedure for switching Press No. 5 from one printing job to the next printing job on Press No. 5. The State did not seek information regarding switching a Press 4 printing job to Press No. 5. PPI must also provide a realistic estimate of the time required for job changeover, not the vague statements "much shorter" or "30% faster".

Responses to Interrogatories No. 12 and 13

In Interrogatories No. 12 and 13, the State requests operating hours, by month, for Presses 4 and 5. PPI has responded that it does not have "production records". If PPI does not have information regarding hours of operation of the two presses, it must supplement these interrogatories and so state. Also, if information regarding hours of operation can be derived from the records described in Interrogatories No. 12 and 13, PPI is required to make a diligent effort to obtain the information from these records, and supplement as appropriate. The State is not obligated to search through PPI's records in an attempt to obtain the information requested in Interrogatories No. 12 and 13.

Response to Interrogatory No. 14

The Response to Interrogatory No. 14 is false. Press No. 5 was extensively modified prior to installation of the control device in 2004. This Interrogatory must be supplemented with all information on repairs, modification, and other alterations to Press No. 5 during this nine year period.

Response to Request for Production No. 5

Production Request No. 5 would include letters, blueprints, invoices, and diagrams related to the engineering, modification, and connection of Press No. 5 to the control device. Please supplement PPI's response or confirm that no such documents exist.

Because of the short period before hearing, we request that supplemental responses be served upon us by August 15, 2012. If you would like to discuss the State's requests prior to that date, please call. We are always willing to discuss discovery issues.

Mr. John A. Simon

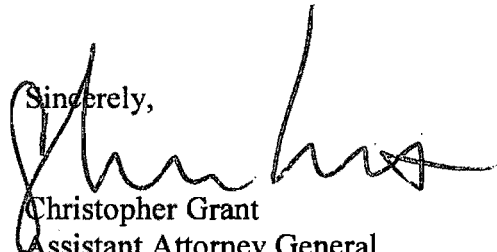
August 8, 2012

Page 5

I would also like to arrange for an agreeable time to view PPI's document production. In addition, we will be seeking access to PPI's facility to inspect and examine Press No. 5. I will contact you to arrange a date for a site visit.

If you have any questions regarding this letter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grant", written over the word "Sincerely,".

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington, #1800
Chicago, Illinois 60602
(312) 814-5388
cgrant@atg.state.il.us



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 10, 2012

Mr. John A. Simon
Mr. Roy Harsch
Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1698
By email and first class mail

Re: Packaging Personified, Inc., PCB 04-16, request for complete document production responses

Dear John:

Thank you for providing your expert witness disclosure by email. I note that Mr. Truzupek's opinion relies on PPI's gross sales. Accordingly, our request for PPI's tax returns for the years 1995-2004, to which you have objected, is relevant to the issues in this case. We request these documents be made available for examination and copying along with the other materials you have agreed to produce.

If you have any questions regarding this letter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grant", is written over the typed name.

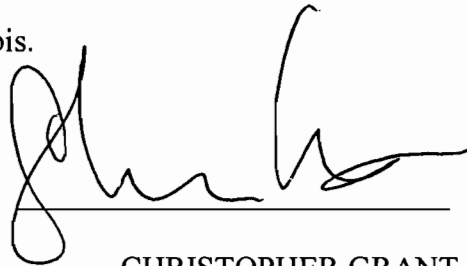
Christopher Grant
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cgrant@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 30th day of August, 2012, the foregoing Motion to Compel, 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)