

4. Nearly a month after filing its appearance in this matter, IEPA requested and was given a 60-day extension of time to file its recommendation, to July 19, 2019. In hindsight, this extension appears to have been completely unnecessary. IEPA said nothing in its July 19, 2019 recommendation that it could not have said on May 20, 2019, when the recommendation was initially due.

5. Since the filing of IEPA's recommendation, the parties have participated in two telephonic status hearings on July 24, 2019 and August 6, 2019.

6. At the status hearing on July 24, 2019, the Hearing Officer indicated that a pre-hearing conference in January with a hearing in February will not afford the Board enough time to make a decision before April 16, 2020, when Emerald's current adjusted standard expires.

7. In light of this fact, Emerald advised the Hearing Officer and IEPA during both status hearings on July 24, 2019 and August 6, 2019 that discovery should proceed so that the Board has adequate time to make a decision before expiration of Emerald's current adjusted standard.

8. On August 7, 2019, the Hearing Officer sent an email to the parties indicating that the Board agreed with Emerald that "a shortened discovery schedule is appropriate due to the redundancy of certain issues with AS 13-2. The Board would like the hearing done within the first 2 weeks of December." (*See* IEPA's Motion to Adopt Discovery Schedule, Exhibit 1.)

9. Despite the Board's consensus, IEPA filed its Motion to Adopt Discovery Schedule on August 16, 2019, requesting the following discovery schedule with a hearing on or after January 28, 2020:

"Petitioner's expert reports deadline: **September 27**;
Illinois EPA's expert reports deadline: **October 25**;
All discovery completed (not propounded) including depositions: **December 20, 2019**;
and

Hearing, Pre-hearing conference on or after **January 28, 2010.**”

(*Id.* at ¶ 7.)

10. In support of its Motion, IEPA stated that discovery is needed regarding Emerald’s efforts to reduce the amount of ammonia it discharges and listed counsel’s conflicts, including seven (7) holidays, a week-long vacation and various meetings or hearings in counsel’s other matters. (*Id.* at ¶¶ 11, 14.)

11. IEPA’s Motion is inappropriate for a number of reasons. First, the other matters that IEPA’s counsel has to work on are no excuse for delaying this matter. If the agency needs to assign other counsel, then it should do so. Second, the holidays and vacations are not relevant, either. The Board and its staff have similar issues and so does Emerald.

12. Most importantly, IEPA’s Paragraph 11 demonstrates a complete lack of understanding of the legal standards that apply to this matter. The purpose of an adjusted standard is to provide relief from regulations of general applicability where “factors relating to [the] petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation[.]” 415 ILCS 5/28.1(c). Contrary to IEPA’s assertion, the degree to which Emerald has been able to reduce its ammonia discharge is not the issue before the Board. The issue is whether Emerald can prove that the four requirements of Section 28.1(c) of the Act have been met.

13. At least three of those requirements are a foregone conclusion. Thus, the Hearing Officer was correct when she wrote in her August 7, 2019 email that there is a redundancy of certain issues between the current matter and AS 13-2 and AS 02-5. The Board has already found twice that Emerald is entitled to an adjusted standard based on circumstances that the Board did not consider in adopting the regulation of general applicability, first in *Petition of*

Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122, AS-2002-005 (Nov. 4, 2004) (“AS 02-5”), and again in *Petition of Emerald Performance Materials LLC for an Adjusted Standard from 35 Ill. Adm. Code 304.122*, AS-2013-002 (April 16, 2015 and December 1, 2016) (“AS 13-2”).

14. Specifically, in AS 02-5 the Board concluded that “the quality and composition of the discharge that [Emerald’s predecessor] produces in its manufacturing process is substantially and significantly different than wastewaters of other industries and POTWs” because the “presence of MBT... inhibits the growth of nitrifying bacteria” such that the Henry Plant is unable to achieve nitrification. (*See* the Board’s November 2004 Opinion and Order in AS 02-5, pg. 17.)

15. In AS 13-2, the Board again granted an adjusted standard on this basis, concluding:

[T]he operation of the facility has not changed substantially since the Board granted an adjusted standard in AS 02-05. The presence of MBT continues to be a significant factor inhibiting nitrification of ammonia on the facility’s discharge. Further, the record shows that the Board’s original adoption of generally applicable ammonia nitrogen standards chiefly considered the impact of discharges from POTWs.

(*See* the Board’s April 2015 Opinion and Order in AS 13-2, attached as Exhibit 1 to Emerald’s Petition, pg. 41.) MBT is still the factor that inhibits nitrification. (*See* Petition at pgs. 15-17.)

16. Likewise, the Board has twice found that Emerald’s discharge has not resulted in significant adverse environmental or health effects. (*See* April 2015 Opinion and Order in AS 13-2, pgs. 61-62; November 2004 Opinion and Order in AS 02-5, pg. 18.) Emerald’s Petition documents that testing subsequent to AS 13-2 has shown no significant adverse effects on the environment. (*See* Petition at pgs. 28-29, 32.)

17. And, even the IEPA admits that renewing the adjusted standard would be consistent with federal law. (*See* Recommendation, pg. 24.)

18. The time for delay is over. Emerald has requested, and the Hearing Officer agreed to, an appropriate discovery schedule in order to allow time for the Board to issue its decision before Emerald's current adjusted standard expires. Emerald proposes the following discovery schedule in order to accomplish this timeline:

Petitioner's expert reports deadline: **September 30, 2019**

Illinois EPA's expert reports deadline: **October 28, 2019**

All discovery completed including depositions: **November 15, 2019**; and

Hearing/Pre-hearing conference: on or after **November 26, 2019**.

WHEREFORE, for the reasons state herein, Emerald Polymer Additives, LLC respectfully requests that the Hearing Officer deny IEPA'S MOTION TO ADOPT DISCOVERY SCHEDULE and order the discovery schedule proposed in Paragraph 16 above.

Respectfully submitted,

Emerald Polymer Additives LLC.

By: /s/ Thomas W. Dimond

One of Its Attorneys

Date: August 22, 2019

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 22, 2019, I have served the attached NOTICE OF ELECTRONIC FILING and EMERALD POLYMER ADDITIVES, LLC'S RESPONSE IN OPPOSITION TO IEPA'S MOTION TO ADOPT DISCOVERY SCHEDULE upon the following persons by electronic mail:

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