

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
Petition of Emerald Performance	)	
Materials, LLC for an Adjusted	)	PCB No. AS-13-2
Standard from 35 Ill. Adm. Code	)	(Adjusted Standard)
304.122(b)	)	

**NOTICE OF ELECTRONIC FILING**

TO: Persons Identified on the Attached Certificate of Service

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board this **Notice of Electronic Filing** and the attached **Motion To The Illinois Pollution Control Board To Stay Expiration Of Emerald's Current Adjusted Standard**, copies of which are attached herewith and served upon you.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: March 13, 2020

By: /s/ Thomas W. Dimond  
One of Its Attorneys

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**MOTION TO THE ILLINOIS POLLUTION CONTROL BOARD TO STAY  
EXPIRATION OF EMERALD'S CURRENT ADJUSTED STANDARD**

Emerald Polymer Additives, LLC (“Emerald”), through its undersigned attorneys, respectfully moves the Illinois Pollution Control Board (the “Board”) for entry of an order staying the expiration date of the current adjusted standard granted pursuant to 35 Ill. Adm. Code 104 and Section 28.1 of the Illinois Environmental Protection Act 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”). Emerald requests that the expiration of the adjusted standard be stayed through and including the date of the Board’s decision on Emerald’s pending *Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 304.122(b)*, AS-2019-002 (“AS 19-2”). In support thereof, Emerald states as follows:

**Emerald’s Current Adjusted Standard.**

1. Emerald is the successor owner and operator of the chemical manufacturing facility located at 1550 County Road 1450 N., in Henry, Illinois (the “Henry Plant”).
2. On November 4, 2004, upon the petition of previous owner and operator Noveon, Inc., the Board granted an adjusted standard from the total ammonia nitrogen as N effluent standard in 35 Ill. Adm. Code 304.122(b) for the effluent from the Henry Plant. *In the Matter of: Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122*, AS 02-5 (“AS 02-5”), Opinion and Order of the Board (Nov. 4, 2004).

3. On September 28, 2012, Emerald filed a petition to renew the adjusted standard, which was docketed as AS 13-2. Finding that Emerald provided sufficient justification for each of the statutory factors governing the issuance of an adjusted standard, the Board granted Emerald's petition in AS 13-2 subject to certain conditions, including an expiration date of April 16, 2020 (five years after the Board's final order). *See* AS 13-2, Opinion and Order of the Board, 68 (Apr. 16, 2015).

**The AS 19-2 Proceeding.**

4. On April 3, 2019, Emerald filed its pending petition for renewal of the adjusted standard, which was docketed as AS 19-2. Emerald filed the petition over a year in advance of the April 16, 2020 expiration date in order to allow both the Illinois Environmental Protection Agency (the "Agency") and the Board adequate time to review the petition and conduct a hearing.

5. Pursuant to a series of telephonic status conferences, the Hearing Officer established a discovery schedule designed to allow the Board sufficient time to make a final decision prior to the expiration of AS 13-2. *See e.g.* AS 19-2, Hearing Officer Orders (Aug. 6 and Aug. 29, 2019).

6. In accordance with the discovery schedule, Emerald has diligently pursued its petition. On August 7, 2019 and October 4, 2019, respectively, Emerald issued and responded to written discovery requests. Emerald also reviewed over 12,000 pages of documents produced by the Agency in discovery. On October 14, 2019, after a brief extension, Emerald filed and served the *Expert Report and Response to Recommendations of Illinois Environmental Protection Agency* of its expert witness Houston Flippin. The Agency chose not to file any expert reports prior to the deadline ordered by the Hearing Officer.

7. During December 9-18, 2019, Emerald conducted depositions of five Agency witnesses and made six of its own witnesses available to the Agency for deposition. Emerald completed its discovery by December 20, 2019, the deadline ordered by the Hearing Officer.

8. Emerald also diligently filed its testimony, exhibits and proposed amendments to the current adjusted standard by December 30, 2019 in accordance with the Hearing Officer's order of October 1, 2019. Specifically, Emerald filed the *Written Testimony of Galen Hathcock* and *Written Expert Testimony of T. Houston Flippin*, along with ten exhibits that Emerald intended to use at the hearing. Emerald also filed its *Pre-Hearing Statement of Proposed Amendments to Adjusted Standard* with exhibits. Emerald supplemented its filing with two more exhibits on January 9, 2019. The Agency did not pre-file any testimony and pre-filed only some of its hearing exhibits.

9. Emerald has made every effort to promptly file its case materials, comply with the discovery schedule and ensure that the Board be given time to issue a ruling on Emerald's pending petition prior to April 16, 2020.

**The Expiration Date for the Current Adjusted Standard Should Be Stayed.**

10. During the hearing in AS 19-2 on January 13 and 14, 2020, after two full days of witness testimony, the parties and the Hearing Officer agreed to continue the hearing to February 3, 2020. AS 19-2, Notice of Continued Hearing (Jan. 16, 2020). This was necessary in part because one Agency witness offered testimony developed over lunch during the first two days of hearings that had not been disclosed in discovery. AS 19-2 Hearing Transcript 2/3/20, 111:17-21 and 130:11 to 132:6. The hearing re-commenced on February 3, 2020, and concluded on February 4, 2020. *See* AS 19-2, Hearing Report (Feb. 4, 2020).

11. The parties' post-hearing briefs in AS 19-2 are due on March 11, 2020, and response briefs are due by March 25, 2020. *Id.*

12. Given that the hearing on Emerald's pending petition was continued into February, Emerald is concerned that the Board will not have adequate time to issue a ruling before the expiration of Emerald's current adjusted standard on April 16, 2020. The current briefing schedule will leave the Board less than 25 days after final briefs to consider the entire record and make a decision before the expiration date of AS 13-2.

13. Granting a stay from the expiration of Emerald's current adjusted standard will not harm the environment. Initially, the Board found that granting the relief in AS 02-5 would not harm the environment because the Henry Plant discharge "does not have an adverse environmental impact on the receiving stream." *See* AS 02-5, Opinion and Order of the Board, 18 (Nov. 4, 2004). After reviewing up-to-date water quality sampling of the Illinois River and whole effluent toxicity ("WET") tests, the Board reached the same conclusion in 2015. *See* AS 13-2, Opinion and Order of the Board, 61-62 (Apr. 16, 2015). The Appellate Court affirmed that conclusion. *See Emerald Performance Materials, LLC*, 2016 IL App(3d) 150526, ¶ 31 ("Emerald has and continues to meet the clean water standards. There was no evidence that the discharge was having any effect on the mollusks or other aquatic life in the river or was any more harmful to the environment than the discharge allowed in the general standard").

14. In AS 19-2, Emerald submitted its most recent water quality sampling and WET test results, which continue to show no impact on the environment. *See* AS 19-2, Petition for Adjusted Standard, 28-29 and exhibits cited there (Apr. 3, 2019); AS 19-2, Petitioner's Hearing Exhibit 1, Written Testimony of Galen Hathcock, ¶¶ 37-41. During the hearing in AS 19-2, the Agency's witnesses agreed that the sampling shows no impact outside the approved zone of

initial dilution, AS 19-2, Hearing Transcript 1/14/20, 325:6-15 (Agency Witness Brian Koch), and that ammonia concentrations in the river downstream of the mixing zone are essentially the same as background, AS 19-2, Hearing Transcript 1/15/20, 74:6-75:4 (Agency witness Scott Twait).

15. Granting a stay will allow the Board time in AS 19-2 to review each of the parties' filings and arguments, the witness's testimony and the testimony of Emerald's expert, Houston Flippin, without the pressure of an impending deadline. Moreover, this type of relief has been granted before. In one case, the Board extended the expiration of an adjusted standard by several months due to an unexpected delay in implementing the project. *See In the Matter of: Adjusted Standard of Tommy House Tire Co., Inc. from 35 Ill. Adm. Code 848.202(b)(1) and (b)(5)*, AS 95-1, Order of the Board, 1 (May 15, 1997). In a similar way, the Board has expressed concern about gaps in adjusted standard coverage and issued adjusted standards retroactively. *See In the Matter of: Proposed Extension of Adjusted Standard Applicable to Illinois-American Water Company's Alton Public Water Supply Facility Discharge to the Mississippi River Under 35 Ill. Adm. Code 304.12, and 304.106*, AS 07-2, Opinion and Order of the Board, 2 (October 18, 2007) (back-dating renewal of adjusted standard in order avoid gap between adjusted standards).

16. Emerald's request for a stay is also analogous to relief allowed by the General Assembly under 415 ILCS 5/28.1(e). *See e.g. Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Environmental Protection Agency*, PCB 16-29, Opinion and Order of the Board, 1 (Aug. 6, 2015) (acknowledging automatic stay under statutory sections protecting those newly subject to a general rule for the first time).

17. If AS 13-2 expires prior to Board action in this case, Emerald would be subject to the 304.122(b) limit for the first time since it took over the Henry Plant in 2006. Because of its diligence, Emerald should not be left with a gap in coverage between AS 13-2 and a potential new adjusted standard in 19-2.

18. A stay until the Board takes final action in AS 19-2 would avoid Emerald needing to take drastic compliance steps that the Board may determine are unwarranted if it ultimately grants Emerald's pending petition. Those drastic steps could possibly include curtailing or shutting down Emerald's production of MBT-related products at the Henry Plant. AS 19-2, Hearing Transcript 2/4/20, 72:6-74:4 (Petitioner's Witness Galen Hathcock)

19. A stay from the expiration of Emerald's current adjusted standard to the date of the Board's action in AS 19-2 is warranted due to Emerald's diligence in pursuing relief under its pending petition in AS 19-2 and in order to allow the Board adequate time to reach a disposition of the petition based on a review of all relevant materials.

WHEREFORE, Emerald requests that the Illinois Pollution Control Board enter an order staying the expiration of Emerald's current adjusted standard entered in AS 13-2 and extending that expiration date through and including the date of the Board's decision on Emerald's pending petition in AS 19-2.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: March 13, 2020

By: /s/ Thomas W. Dimond  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on March 13, 2020, I have served the attached **Notice of Electronic Filing and Motion To The Illinois Pollution Control Board To Stay Expiration of Emerald's Current Adjusted Standard** upon the following persons by electronic mail:

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