

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	AS 13-002
Petition of Emerald Performance	)	
Materials, LLC for an Adjusted	)	(Adjusted Standard)
Standard from 35 Ill. Adm. Code	)	
304.122(b)	)	

To: See attached service list.

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board **NOTICE OF ELECTRONIC FILING; APPEARANCE;** and **ILLINOIS EPA’S OBJECTION TO MOVANT’S MOTION TO STAY**, on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: March 27, 2020

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Rex L. Gradeless, #6303411  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
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Rex.Gradeless@Illinois.Gov

Respondent,

BY: /s/Rex L. Gradeless  
Rex L. Gradeless

**THIS FILING IS SUBMITTED ELECTRONICALLY**

**SERVICE LIST**

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ILLINOIS POLLUTION CONTROL BOARD

Carol Webb, Hearing Officer

1021 North Grand Avenue East

Springfield, Illinois 62794-9274

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**APPEARANCE**

The undersigned hereby enters his appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

Dated: March 27, 2020

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**ILLINOIS EPA'S OBJECTION TO  
MOVANT'S MOTION TO STAY**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through, Rex L. Gradeless, Assistant Counsel of Illinois EPA, and for its objection to Emerald Polymer Additives, LLC's ("Movant") motion to stay states as follows:

**I. BACKGROUND**

1. In this case, the Illinois Pollution Control Board ("Board") granted an adjusted standard with several conditions to Emerald Performance Materials, LLC ("Movant's Parent Corporation") 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").

2. The entire point of the five-year sunset provision in AS 13-2 was to "encourage Movant's Parent Corporation to **aggressively** pursue means to reduce the amount of ammonia it discharges into the Illinois River or institute alternative means to alleviate the pollution". *Emerald Performance Materials, LLC v. The Illinois Pollution Control Board*, 2016 IL App (3d) 150526 (¶41). (Emphasis added). Both Movant and Movant's Parent Corporation did next to nothing during the succeeding five years to pursue means to reduce the amount of ammonia it discharges into the Illinois River.

3. Movant now owns and operates the chemical manufacturing facility located at 1550 County Road 1450 N., in Henry, Illinois ("Henry Plant").

4. When Movant's ammonia levels are within its adjusted standard, it does not work on reducing ammonia any further and, instead, focuses on other challenges at the Henry Plant. (Tr. January 14, 2020 at 52.)

5. After taking virtually no actions toward reducing ammonia in its effluent since the last adjusted standard, Movant filed a petition for adjusted standard seeking the same relief as Movant's Parent Corporation from the discharge prohibition of effluent containing more than 3.0 mg/L of total ammonia nitrogen as N found in 35 Ill. Admin Code 304.122(b) on April 3, 2019. *See Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 304.122(b)*, AS 2019-002 ("AS 19-2")

6. In AS 19-2, Illinois EPA's recommendation was due Saturday, May 18, 2019. However, Movant had no objection extending the recommendation filing deadline 60 days to July 19, 2019. *See* May 20, 2019, Hearing Officer Order.

7. In AS 19-2, the parties participated in a telephone status conference where Movant requested expedited discovery and the Illinois EPA agreed to prioritize AS 19-2 but was concerned Movant's discovery responses would necessitate additional discovery requests. *See* August 6, 2019, Hearing Officer Order. Illinois EPA was right.

8. On August 29, 2019, the Hearing Officer in AS 19-2 set a discovery schedule and tentative hearing dates. *See* October 1, 2019, Hearing Officer Order.

9. On September 23, 2019, Movant in AS 19-2 moved to extend the filing deadlines of expert reports within the discovery schedule. *See* Movant's September 23, 2019, motion.

10. On December 19, 2019, due to Movant's inaction, Illinois EPA issued a subpoena for documents from a witness in AS 19-2.

11. On December 20, 2019, due to Movant's inaction, Illinois EPA was forced to file

a motion to compel discovery documents from Movant. That motion to compel was granted. *See* January 6, 2020, Hearing Officer Order.

11. On December 26, 2019, due to Movant's inaction, Illinois EPA subpoenaed witnesses to appear for depositions – typically this kind of thing can be agreed to by parties; notably Illinois EPA did not require subpoenas of Movant when it requested witness depositions.

12. Hearings were held in AS 19-2 on January 14-15, 2020. By agreement of the parties, the hearings were continued to February 3-4, 2020.

13. On March 13, 2020, Movant filed a motion to stay the adjusted standard granted to Movant's Parent Corporation by the Board in AS 13-2 ("Motion").

## II. ARGUMENTS

Movant's motion should be denied because 1) stays for adjusted standards are not allowed under Illinois law, 2) the Board should deny Movant's adjusted standard petition in AS 19-2, and 3) Movant's failure to act to reduce ammonia in its effluent over the last five years should not be grounds for granting a stay now.

First and foremost, Illinois law prohibits stays in adjusted standard cases:

*"If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation, and Liability Act, or the State RCRA, UIC or NPDES programs."* [415 ILCS 5/28.1(e)]

Here, 415 ILCS 5/28.1(e) precludes Movant's motion for stay as a matter of law. Specifically, Movant's Parent Corporation applied for this (AS 13-2) adjusted standard on September 28, 2012, or 3613 days after the effective date of 35 Ill. Adm. Code 304.122(b).

Further, Movant applied for an adjusted standard in AS 19-2 on April 3, 2019, or 5991 days after the effective date of 35 Ill. Adm. Code 304.122(b). Thus, the petition for an adjusted standard was not filed within 20 days after the effective date of 35 Ill. Adm. Code 304.122(b).

Further, an adjusted standard from 35 Ill. Adm. Code 304.122(b) may not be stayed because Section 304.122(b) was adopted by the Board to implement part of Illinois' NPDES program. Therefore, Illinois law expressly precludes Movant's motion for stay.

Moreover, the entire point of the five-year sunset provision in AS 13-2 was to "encourage Movant's Parent Corporation to *aggressively* pursue means to reduce the amount of ammonia it discharges into the Illinois River or institute alternative means to alleviate the pollution". *Emerald Performance Materials, LLC v. The Illinois Pollution Control Board*, 2016 IL App (3d) 150526 (¶41). (Emphasis added). Movant cites to no cases where a petitioner received a stay outside the 20-day window provided by 415 ILCS 5/28.1(e). Instead, Movant cites to one case wherein the Board amended an adjusted standard Order. Motion ¶15. In that case, the Board amended its adjusted standard Order, for a month and a half, where the movant, who unlike here was also the petitioner in the underlying adjusted standard, was actively trying to acquire a new facility and encountered an unexpected delay in closing; there was no stay in that case. *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). Here, when Movant's ammonia levels are within its adjusted standard, it does not work on reducing ammonia any further and, instead, focuses on other challenges at the Henry Plant. (Tr. January 14, 2020 at 52.) Given this approach and lack of any pending construction, property acquisition or other tangible efforts aimed at pollution control, Movant's lack of readiness for expiration of its adjusted standard is not unexpected. Movant's failure to institute means to reduce its ammonia discharges

over the course of the adjusted standard granted in AS 13-2 is not grounds for staying its expiration.

As a matter of law, the Board should deny Movant's motion to stay expiration of the adjusted standard in this proceeding (AS 13-2) and deny Movant's petition for adjusted standard in AS 19-2.

To the extent the Board feels compelled to grant a stay over Illinois EPA's objection, Illinois EPA requests that any stay be date-specific and extremely limited in duration in order to incentivize Movant to comply with the ammonia standards. Illinois EPA is prepared to act if Movant's request for an adjusted standard in AS 19-2 is denied by the Board, so Illinois EPA does not believe a stay is warranted or permitted under Illinois law.

WHEREFORE, for the reasons stated herein, Movant's motion for stay should be denied.

Dated: March 27, 2020

Rex L. Gradeless, #6303411  
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ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

BY: /s/Rex L. Gradeless  
Rex L. Gradeless

**THIS FILING IS SUBMITTED ELECTRONICALLY**

**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF ELECTRONIC FILING; APPEARANCE;** and **ILLINOIS EPA'S OBJECTION TO MOVANT'S MOTION TO STAY** by e-mail upon Thomas W. Dimond at the e-mail address of [Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com), Kelsey Weyhing at the e-mail address of [Kelsey.Weyhing@icemiller.com](mailto:Kelsey.Weyhing@icemiller.com), Christine Zeivel at the e-mail address of [Christine.Zeivel@illinois.gov](mailto:Christine.Zeivel@illinois.gov), upon Don Brown at the e-mail address of [don.brown@illinois.gov](mailto:don.brown@illinois.gov), and upon Carol Webb at the e-mail address of [Carol.Webb@illinois.gov](mailto:Carol.Webb@illinois.gov).

That I have served the attached **NOTICE OF ELECTRONIC FILING; APPEARANCE;** and **ILLINOIS EPA'S OBJECTION TO MOVANT'S MOTION TO STAY** upon any other persons, if any, listed on the Service List, by placing a true copy in an envelope duly address bearing proper first class postage in the United States mail at Springfield, Illinois on March 27, 2020.

I herein certify that each hearing exhibit being electronically filed is an accurate reproduction of the corresponding exhibit offered at the hearing.

That my e-mail address is [Rex.Gradeless@Illinois.gov](mailto:Rex.Gradeless@Illinois.gov).

That the number of pages in the e-mail transmission is nine (9).

That the e-mail transmission took place before 4:30 p.m. on the date of March 27, 2020.

/s/Rex L. Gradeless  
March 27, 2020