

ILLINOIS POLLUTION CONTROL BOARD  
April 16, 2020

IN THE MATTER OF: )  
)  
PETITION OF EMERALD POLYMER ) AS 13-2  
ADDITIVES, LLC, FOR AN ADJUSTED ) (Adjusted Standard- Water)  
STANDARD FROM 35 ILL. ADM. CODE )  
304.122(b) )

ORDER OF THE BOARD (by B.K. Carter)

On March 13, 2019, petitioner Emerald Polymer Additives, LLC (Emerald) filed a motion to stay expiration of its current adjusted standard, in this closed docket. Specifically, Emerald requested the Board stay the expiration of its current adjusted standard “to the date of the Board’s action 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.” Mot. at 6. The Illinois Environmental Protection Agency (Agency) responded on March 27, 2020 (Obj.), objecting to the motion as unsupported by the relevant facts or law.

The Board denies the motion to stay the effective date of this closed adjusted standard for the reasons discussed below. The Board will first summarize the arguments of Emerald and the Agency, then discuss its analysis.

**Emerald Motion**

Emerald argues that it filed its current petition, AS 19-2, over a year in advance of the April 16, 2020 expiration of its adjusted standard and “diligently pursued its petition” since then. Mot. at 2. Emerald issued discovery on August 7, 2019 and responded to discovery on October 4, 2019. *Id.* at 2. On October 14, 2019, filed the expert report of Houston Flippin. *Id.* at 2. In December 2019, the parties conducted depositions. *Id.* at 3. Hearings were conducted on January 13-14, 2020 and February 3-4, 2020. *Id.* at 3. Post-hearing briefs and response briefs were filed on March 11, 2020 and March 25, 2020 respectively.

Emerald alleges granting this stay will not harm the environment. *Id.* at 4. In support, Emerald cites the Board’s approval of adjusted standards for this facility in 2004 and 2015, its most recent water quality sampling and WET test results, and the Agency “witnesses agreed that the sampling shows no impact outside the approved zone of initial dilution... and that ammonia concentrations in the river downstream of the mixing zone are essentially the same as background.” *Id.* at 4-5.

Emerald also argues that the Board has the authority to grant the requested stay, citing two cases where the Board modified the duration of adjusted standards to avoid gaps between expiring and new adjusted standards. *Id.* at 5, *citing In 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 at 1, (May 15, 1997) (Tommy House Tire); 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 at 2 (October 18, 2007) (Illinois-American Water).

### **Agency Objection**

On March 27, 2020, the Agency filed its objection to Emerald's motion, asserting that "[t]he 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'" and "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." Obj. at 4, *quoting Emerald Performance Materials, LLC v. The Illinois Pollution Control Board*, 2016 IL App (3d) 150526 (¶41) (emphasis added). The Agency further claims:

- Emerald does not work to reduce ammonia below the approved adjusted standard;
- Emerald took "virtually no actions toward reducing ammonia in its effluent since the last adjusted standard;
- Emerald requested and agreed to extensions for filings and discovery; and
- The Agency had to move to compel discovery of documents and subpoena witnesses from Emerald.

Obj. at 5-6.

The Agency also argues that Illinois law prohibits a stay in this case. Section 28.1(e) of the Illinois Environmental Protection Act (Act) only allows a petition for an adjusted standard to stay the operation of a rule if the petition is filed within 20 days after the effective date of the relevant regulation.<sup>1</sup> Obj. at 6, *quoting* 415 ILCS 5/28.1(e). In addition, no stay applies to regulations, such as Section 304.122(b), which are adopted by the Board to implement the requirements of the Illinois' NPDES program. Obj. at 6, *quoting* 415 ILCS 5/28.1(e).

The Agency further points out that Emerald did not cite any cases where the petitioner received a stay outside of the 20 days. In Tommy House Tire, the Board amended its adjusted standard for specific period of time, based on a specific unexpected building delay. Tommy House Tire at 1. In Illinois-American Water, the Board retroactively applied the adjusted standard to the end of the previous adjusted standard, one day earlier, to avoid a gap in adjusted standards. Illinois-American Water at 2.

The Agency asserts that the cases that Emerald cites do not apply to the current facts. Emerald has not pointed to new information analogous to the building delay in Tommy House Tire. Nor has Emerald requested retroactive application of any adjusted standard granted in AS 19-2.

---

<sup>1</sup> Emerald claimed that its request for a stay is analogous to relief allowed by the General Assembly under 415 ILCS 5/28.1(e). Mot. at 5, *citing Emerald cited Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Environmental Protection Agency*, PCB 16-29, Opinion and Order of the Board (Aug. 6, 2015)

## DISCUSSION

The Board agrees with Emerald that the Board may amend an adjusted standard for a certain period of time. *See Tommy House Tire* at 1. Further, Emerald also established that the Board may retroactively apply a new adjusted standard to the end of the previous adjusted standard.<sup>2</sup> *See Illinois-American Water* at 2.

Emerald, however, does not provide any support for its request for the Board to stay the expiration of Emerald's current adjusted standard for an indefinite period of time. The Agency correctly states that Section 28.1(e) does not authorize the stay Emerald requests. Further, Emerald does not provide any caselaw to support staying the expiration of their adjusted standard. Therefore, the Board denies Emerald's Motion.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

---

<sup>2</sup> Any delay due to Board consideration of the adjusted standard application or the limitations arising out of the COVID-19 Pandemic may be relevant under Sections 33(c) and 42(h) of the Act in determining the appropriate penalty for exceeding discharge levels during a gap between the expiring adjusted standard and a ruling on the adjusted standard application. See 415 ILCS 5/33(c), 42(h).