

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	AS 19-002
Petition of Emerald Polymer)	
Additives, 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 Illinois Pollution Control Board the Illinois Environmental Protection Agency's MOTION TO ADOPT DISCOVERY SCHEDULE, for the above-captioned proceeding, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: August 16, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Rex L. Gradeless, #6303411
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Rex.Gradeless@Illinois.gov

Respondent,

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

THIS FILING IS SUBMITTED ELECTRONICALLY.

SERVICE LIST

EMERALD POLYMER ADDITIVES, LLC

Thomas W. Dimond

Kelsey Weyhing

ICE MILLER LLP

200 West Madison, Suite 3500

Chicago, Illinois 60606

ILLINOIS POLLUTION CONTROL

BOARD

Don Brown, Clerk

James R. Thompson Center

100 W. Randolph, Suite 11-500

Chicago, IL 60601

ILLINOIS POLLUTION CONTROL

BOARD

Carol Webb, Hearing Officer

1021 North Grand Avenue East

Springfield, Illinois 62794-9274

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 19-002
Petition of Emerald Polymer)
Additives, LLC for an Adjusted) (Adjusted Standard)
Standard from 35 Ill. Adm. Code)
304.122(b))

MOTION TO ADOPT DISCOVERY SCHEDULE

NOW COMES the Illinois Environmental Protection Agency (hereafter "Illinois EPA"), by and through its counsel, and pursuant 35 Ill. Adm. Code 101.610(m) and 101.612, hereby requests the Hearing Officer grant the following discovery schedule in the above-captioned matter.

In support thereof, the following statements are made:

1. This matter was filed on April 3, 2019.
2. On May 16, 2019, the Illinois EPA filed an unopposed motion for extension of time, until July 19, 2019, to file its recommendation in this proceeding.
3. On May 20, 2019, the parties were notified that the Illinois Pollution Control Board ("Board") assigned a hearing officer and granted Illinois EPA's unopposed motion for extension of time to file its recommendation.
4. On May 30, 2019, the Board accepted this matter for hearing,
5. Illinois EPA filed its recommendation on July 19, 2019, and this matter was set for a telephone status conference on July 24, 2019.
6. On July 24, 2019, the Petitioner and the Illinois EPA desired to discuss a discovery schedule and this matter was set for another telephone status conference on August 6, 2019.
7. At the August 6, 2019, telephone status conference, the parties disagreed about the discovery schedule. Petitioner requested an expedited discovery schedule noting that the current adjusted standard that it enjoys expires on April 16, 2020. The Hearing Officer indicated that the

Board generally prefers at least 60 days after a hearing to have time to render a decision (not including time for the parties to provide closing briefs), noted that the Board may be soon short on technical staff, and that there was no statutory decision deadline for the Board. The Illinois EPA proposed then, and proposes now, the following discovery schedule:

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, 2020**.

8. On August 6, 2019, the Hearing Officer ordered the Illinois EPA to respond to Petitioner's discovery and serve discovery requests on the Petitioner by September 6, 2019. This order does not currently conflict with Illinois EPA's proposed schedule above and the order will give the Petitioner until October 4, 2019, to respond, or object, to Illinois EPA's discovery requests. At such time, the Illinois EPA will be able to then evaluate what, if any, additional discovery will be necessary and will be able to develop and schedule depositions of witnesses.

9. On August 7, 2019, the Hearing Officer indicated the following via email:

"Ahead of our 9/5 status call, I want to let you know that the consensus over here is 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 August 7, 2019, email attached as Exhibit 1.

10. The Illinois EPA does not know how the Board has reached the above conclusion with respect to *this* case and further does not know what will be discovered during the discovery process in *this* case.

11. The point of the five-year sunset provision was to encourage the Petitioner 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 v. IPCB and IEPA*, 2016 IL App (3d) 150526 (¶41). (Emphasis added). Here, the Petitioner requests the

same exact standard it has easily met for the last five years. Thus, Petitioner's efforts, or lack thereof, over the last five years to reduce the amount of ammonia it discharges, or methods it has, or has not, instituted to alleviate pollution, are some of the many issues in this case.

12. Although, Petitioner, or its predecessors, have been discharging effluent that exceeds the allowable amount of pollution into the Illinois River for decades, the Petitioner must still provide adequate proof of each and every element for an adjusted standard. 415 ILCS 5/28.1

13. The Illinois EPA's proposed schedule will allow the Illinois EPA to fully develop the record, fully conduct discovery on the issues raised by the Illinois EPA in its recommendation and will allow for the Illinois EPA to adequately prepare for hearing in this matter. This motion is made in good faith and not made to cause undue delay.

14. Additionally, undersigned counsel has the following (disclosable¹) conflicts currently scheduled which makes the already-reasonable proposed discovery schedule in paragraph seven above more necessary and appropriate:

- 8/22 – In Re Willis, 2019-D-343 hearing, Sangamon County, Illinois
- 8/28 – Sangamon County Expungement & Record Sealing Summit
- 8/30 – 9/2 – State Holiday (Labor Day weekend)
- 9/9 – 9/17 – Vacation
- 9/26 – Mandated public outreach scheduled, *See* P.A. 101-171
- 10/1 – Mandated public outreach scheduled, *See* P.A. 101-171
- 10/2 – Mandated public outreach scheduled, *See* P.A. 101-171
- 10/14 – State Holiday (Columbus Day)
- 11/6 – Wastewater Operator Board of Certification meeting, Illinois EPA HQ
- 11/11 – State Holiday (Veteran's Day)
- 11/28 – 11-29 – State Holiday (Thanksgiving)
- 12/23 – 12/27 – State Holiday (Christmas)
- 1/1 – State Holiday (New Year's Day)
- 1/20 – State Holiday (Martin Luther King Day)

¹ Disclosure of other conflicts and/or meetings may violate attorney-client privilege and are therefore not disclosed.

WHEREFORE, for the reasons stated herein, the Illinois EPA respectfully requests that the Hearing Officer grant Illinois EPA's MOTION TO ADOPT DISCOVERY SCHEDULE and order the discovery schedule proposed in paragraph seven above.

Dated: August 16, 2019

Rex L. Gradeless, #6303411
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Rex.Gradeless@Illinois.gov

Respectfully submitted,

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 **MOTION TO ADOPT DISCOVERY SCHEDULE** by e-mail upon Thomas W. Dimond at the e-mail address of Thomas.Dimond@icemiller.com, upon Kelsey Weyhing at the e-mail address of Kelsey.Weyhing@icemiller.com, upon Don Brown at the e-mail address of don.brown@illinois.gov upon Carol Webb at the e-mail address of Carol.Webb@illinois.gov.

That I have served the attached **MOTION TO ADOPT DISCOVERY SCHEDULE** 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 August 16, 2019.

That my e-mail address is Rex.Gradeless@Illinois.gov.

That the number of pages in the e-mail transmission is seven (7).

That the e-mail transmission took place before 4:30 p.m. on the date of August 16, 2019.

/s/Rex L. Gradeless

August 16, 2019

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

BY: 

Rex L. Gradeless, #6303411
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Rex.Gradeless@Illinois.gov

Gradeless, Rex

From: Webb, Carol
Sent: Wednesday, August 7, 2019 3:19 PM
To: Dimond, Thomas (Thomas.Dimond@icemiller.com); Gradeless, Rex
Subject: AS 19-2 Emerald follow up

Good afternoon,

Ahead of our 9/5 status call, I want to let you know that the consensus over here is 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. Additionally, petitioner may apply for non-disclosure of any confidential information pursuant to 35 Ill. Adm. Code 130.subpart D.

Thanks,
Carol

State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.

