

**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 Pollution Control Board ILLINOIS EPA'S MOTION TO COMPEL, for the above-captioned proceeding, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: December 20, 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) )

**ILLINOIS EPA'S MOTION TO COMPEL**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its counsel, and pursuant to Illinois Supreme Court Rule 219, hereby moves the Illinois Pollution Control Board ("Board") to compel the Petitioner to respond to the Illinois EPA's discovery requests. In support thereof, the Illinois EPA states the following:

1. Illinois Supreme Court Rule 219 provides that if a party fails to answer any interrogatory or request for production of documents, "the proponent of the question or interrogatory . . . may . . . move for an order compelling an answer or compliance with the request." Ill. Sup. Ct. Rule 219(a).

2. A party has a right to obtain "full disclosure regarding any matter relevant to the subject matter involved in the pending action" through discovery. Ill. Sup. Ct. Rule 201(b)(1) (emphasis added). A party also has a duty to comply with discovery rules. Ill. Sup. Ct. Rule 219.

3. Illinois Supreme Court Rule 201 also requires that the parties "facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery." Ill. Sup. Ct. Rule 201(k).

4. If the Board finds that a party's refusal to respond to a discovery request was without substantial justification, "the court shall require the offending party or deponent, or the party whose attorney advised the conduct complained of, or either of them, to pay to the aggrieved

party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees." Ill. Sup. Ct. Rule 219(a).

5. In this case, Petitioner asserts, *inter alia*, that data is not available to assess the impacts of its alleged improvement efforts on the ammonia nitrogen discharge levels or the cost and economic reasonableness of those alleged efforts (April 2, 2019, Pet., p. 7-9); that treatment alternatives are "cost prohibitive" (April 3, 2019, Pet., p. 9); the economic cost (of river water dilution) is "prohibitive" (April 3, 2019 Pet., p. 24); and given... "the high cost of the technically feasible control technologies, the requested adjusted standard relief is warranted" (April 3, 2019, Pet., p. 31). Additionally, Petitioner's financiers consider, *inter alia*, economics and financial affordability when making decisions on capital improvement projects. (Gotch Dep. p. 32-36)

6. Petitioner, as a legal entity, does not pay its own bills. Instead, Emerald Performance Materials, LLC servers as the "pool cash hub" for four entities known as 1) the Petitioner, 2) Kalama Chemical, LLC, 3) Emerald Specialty Polymers, LLC, and 4) Emerald Performance Hong Kong Limited.

7. At a minimum, the pool cash hub collectively forecasts more than half a billion dollars in revenues for fiscal year 2019. The pool cash hub pools its resources together and cash flows to and from Emerald Performance Materials, LLC. In turn, Emerald Performance Materials, LLC pays all of Petitioner's bills, would pay for any capital improvement project from Petitioner (including the technically feasible proposed projects in this case), pays Petitioner's employee salaries, and keeps Petitioner's lights on at the Henry, Illinois plant. Based upon information and belief, Emerald Performance Materials, LLC has further paid for the legal representation in the instant adjusted standard case.

8. On June 7, 2019, and to understand the economic reasonableness of the treatment alternatives in this case, the Illinois EPA requested Petitioner provide financial information for Emerald Performance Materials, Emerald Kalama Manufacturing, and Emerald Polymer Additives. *See* p. 2, Email request to Petitioner's counsel, no. 8, Exhibit A.

9. On September 6, 2019, the Illinois EPA requested Petitioner's balance sheets, and any annual shareholder reports for fiscal years 2015-2019 (Request No. 4); assets, liabilities, and expenses including operation and maintenance costs for fiscal years 2015-2019 (Interrogatory No 3); and projected annual operation and maintenance costs for fiscal years 2020-2024 (Interrogatory No. 4). *See* Illinois EPA's First Request for Petitioner to Produce Documents and Illinois EPA's First Interrogatories Directed to Petitioner attached collectively as Exhibit B.

10. Instead of responding to Illinois EPA's requests, the Illinois EPA received two unaudited sheets of paper entitled "statements of operations" and "balance sheets" on October 11, 2019. However, through discovery, it has become known that these two sheets of paper were created upon request by the pool cash hub, Emerald Performance Materials, LLC, outside the scope of its regularly conducted business activity. These two sheets of paper were not actually reflective of Petitioner's true financial picture or its ability to borrow interest free from the cash hub.

11. The two sheets of paper sent to the Illinois EPA were grossly misleading, oddly put together outside the scope of Emerald Performance Materials, LLC's regular course of business. Instead, Petitioner should have submitted its financial information as normally kept in the ordinary course of business and incorporated within the financial information of its parent company, Emerald Performance Materials, LLC.

12. On December 17, 2019, the Illinois EPA again requested Emerald Performance Materials, LLC's balance sheet(s) for FY 2015-2019; income statement(s) for FY 2015-2019; cash flow statement(s) for FY 2015-2019; and annual audits for FY 2015-2019. (Harding Deposition).

13. On December 17, 2019, Emerald Performance Materials, LLC's Corporate Comptroller, Amy Harding, stated in a deposition that she could easily provide the requested information to the Illinois EPA and that Emerald Performance Materials, LLC's annual audits are even emailed out to its company stakeholders each year. Thus, the Illinois EPA again made the request for this financial information.

14. At that time, however, Petitioner's counsel strenuously objected to the Illinois EPA obtaining this relevant financial information. Petitioner's counsel suggested that the Illinois EPA make another formal written request.

15. On December 18, 2019, the Illinois EPA provided Petitioner's counsel with a letter requesting discovery responses without court action pursuant to Rule 201(k) of the Illinois Supreme Court Rules. *See* Letter attached as Exhibit C.

16. On December 19, 2019, the Illinois EPA caused to be served a non-party Subpoena Duces Tecum on Emerald Performance Materials, LLC requesting Emerald Performance Materials, LLC's balance sheet(s) for fiscal years 2015-2019; income statement(s) for fiscal years 2015-2019; cash flow statement(s) for fiscal years 2015-2019; and annual audits for fiscal years 2015-2019. *See* attached Exhibit D.

17. Good faith responses to discovery would have warranted the disclosure of the financial information as it was normally kept in the regular course of business at Emerald Performance Materials, LLC.

18. On December 20, 2019, undersigned called Petitioner's counsel and requested the same financial information. Undersigned was informed that Petitioner's counsel was going to submit a letter in response. Later, this same day Petitioner's counsel submitted a letter that further showed a disagreement about the discoverability of the requested relevant financial information for this adjusted standard. *See* email attached as Exhibit E.

19. As of the date of this motion, Illinois EPA has not received complete responses to its requests for production or interrogatories and has no indication that complete responses are forthcoming. The financial information should be provided in its normal format (included within the financial information of its parent company, Emerald Performance Materials, LLC).

20. Even though Illinois EPA contacted Petitioner on multiple occasions to request responses to the discovery, Illinois EPA has not received responses to the discovery.

21. Despite the undersigned's numerous personal consultations and reasonable attempts to resolve the parties' differences, the parties have been unable to reach an accord, and Petitioner has been unwilling to respond to Illinois EPA's discovery requests and attempts to resolve the parties' differences.

22. Illinois EPA respectfully requests an Order from the Hearing Officer of the Board requiring Petitioner to respond to the requests and provide: Emerald Performance Materials, LLC's balance sheet(s) for fiscal years 2015-2019; income statement(s) for fiscal years 2015-2019; cash flow statement(s) for fiscal years 2015-2019; and annual audits for fiscal years 2015-2019 because the Illinois EPA served Petitioner with appropriate discovery requests, Petitioner failed to completely respond to those requests in good faith, and despite Illinois EPA's numerous attempts to resolve this matter, Petitioner has not fully responded to the discovery requests.

23. Petitioner's refusal to fully respond to the discovery requests, despite the undersigned's numerous attempts to avoid the necessity of a motion to compel is without substantial justification. Consequently, the Hearing Officer should order the Petitioner to pay Illinois EPA's reasonable expenses incurred in filing this motion, including reasonable attorney's fees. Ill. Sup. Ct. Rule 219(a).

WHEREFORE, Illinois EPA respectfully requests that this honorable Board grant Illinois EPA's Motion to Compel and award reasonable costs and expenses incurring in obtaining the Hearing Officer's Order.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

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

Dated: December 20, 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

**THIS FILING IS SUBMITTED ELECTRONICALLY**



**Gradeless, Rex**

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**From:** Thomas.Dimond@icemiller.com  
**Sent:** Thursday, June 13, 2019 3:07 PM  
**To:** Gradeless, Rex  
**Subject:** [External] RE: [EXT] RE: Emerald Polymers AS 19-002

Rex, confirming our meeting for Tuesday, June 18 at 2:00 pm. Not sure if we will have answers or data for all of the questions below, but we are trying. Please advise if we should arrive at the main entrance or the north entrance. Our attendees (other than me) will be as follows:

- Galen Hathcock, Plant Director at Henry
- Lance Richards, Environmental Manager
- Mark Winter
- Chris Wrobel (by phone), Global EH&S Manager

Please advise as to who your attendees will be.

*Tom*

Thomas W. Dimond  
Ice Miller LLP  
200 W. Madison Street, Ste. 3500  
Chicago, IL 60606-3417  
312-726-7125  
312-208-7930 (cell)  
[thomas.dimond@icemiller.com](mailto:thomas.dimond@icemiller.com)

**From:** Gradeless, Rex [mailto:Rex.Gradeless@illinois.gov]  
**Sent:** Friday, June 07, 2019 1:25 PM  
**To:** Dimond, Thomas  
**Subject:** RE: [EXT] RE: Emerald Polymers AS 19-002

**\*\*EXTERNAL EMAIL\*\***

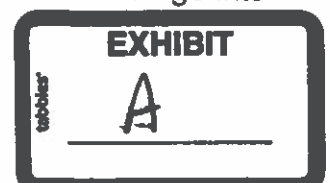
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Tom:

I do hope June 18<sup>th</sup> will work for your team; please let me know about that date. (My apologies that my previous email said June 19<sup>th</sup>).

Also, in terms of meeting format, do you think your folks would mind giving a short presentation about the facility and what, if anything, has changed in the last five years?

After that presentation, I propose we have discussion/ questions on the presentation and then go into our questions/ topics below.



Thoughts on that setup?

**Discussion Questions/ Topics**

1. Has Emerald considered using an Algaewheel as a method for treatment? If not, would they be willing to?
2. What's Emerald's onsite tankage capacity? Is any tankage not being used?
3. What have been the results of the continuous process improvement team? How often does the team meet? What have they been evaluating? Has the team identified any improvements?
4. Has Emerald and/or B&C identified any treatment alternatives that would reduce effluent ammonia nitrogen concentrations at any level?
5. Has Emerald considered separating the MBT process and treating it separately? Explain.
6. What, if any, water reduction measures have Emerald considered and/or evaluated?
7. **A few days before the meeting**, please provide the MBT sampling data required by Special Condition 15 of NPDES permit.
8. Please provide financial information for Emerald Performance Materials, Emerald Kalama Manufacturing, and Emerald Polymer Additives.
9. Where in the treatment process is MBT created and/or added into the process? (PVC tank, C18 tank, PC tank?) Where in the treatment process is MBT treated?
10. What, if any, biological treatment options are available, or have been considered, after the secondary clarifier?
11. Where is MBT treated within the process?

12. Are the attached Sources and Users Flow Diagrams current? Do they depict the current treatment processes/ treatment used of the facility? Do they depict current flows and flow rates? If not, please send updated diagrams.



**Rex L. Gradeless**  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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**From:** Gradeless, Rex  
**Sent:** Friday, June 7, 2019 9:04 AM  
**To:** Thomas.Dimond@icemiller.com  
**Subject:** RE: [EXT] RE: Emerald Polymers AS 19-002

Sorry, I meant June 18, 2019. Does that work? We'll bring the speaker phone!

---

**From:** [Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com) <[Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com)>  
**Sent:** Friday, June 7, 2019 8:59 AM  
**To:** Gradeless, Rex <[Rex.Gradeless@illinois.gov](mailto:Rex.Gradeless@illinois.gov)>  
**Subject:** [External] RE: [EXT] RE: Emerald Polymers AS 19-002

Thanks, Rex. That should be good. Let's put it as tentative and I will confirm with my team. We will have one participant who will participate by telephone (he is officed in Washington state), so if you could arrange a room with a speaker phone that would be great.

*Tom*

Thomas W. Dimond  
Ice Miller LLP  
200 W. Madison Street, Ste. 3500  
Chicago, IL 60606-3417  
312-726-7125  
312-208-7930 (cell)

[thomas.dimond@icemiller.com](mailto:thomas.dimond@icemiller.com)

**From:** Gradeless, Rex [<mailto:Rex.Gradeless@illinois.gov>]  
**Sent:** Friday, June 07, 2019 8:57 AM  
**To:** Dimond, Thomas  
**Subject:** [EXT] RE: Emerald Polymers AS 19-002

**\*\*EXTERNAL EMAIL\*\***

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How about Wednesday, June 19, 2019, at 2:00 p.m. at the Illinois EPA in Springfield?



**Rex L. Gradeless**  
Assistant Counsel  
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**From:** [Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com) <[Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com)>  
**Sent:** Tuesday, June 4, 2019 7:52 AM  
**To:** Gradeless, Rex <[Rex.Gradeless@illinois.gov](mailto:Rex.Gradeless@illinois.gov)>  
**Subject:** [External] Emerald Polymers AS 19-002

Rex, left you a voicemail yesterday. Think it would be great to get questions in advance. We would suggest a meeting in person in Springfield on June 17, 19, 20 or 21 with an early afternoon start. Would that work?

*Tom*

Thomas W. Dimond  
Ice Miller LLP  
200 W. Madison Street, Ste. 3500  
Chicago, IL 60606-3417  
312-726-7125  
312-208-7930 (cell)  
[thomas.dimond@icemiller.com](mailto:thomas.dimond@icemiller.com)

**From:** Gradeless, Rex [<mailto:Rex.Gradeless@illinois.gov>]  
**Sent:** Tuesday, May 28, 2019 4:46 PM

To: Dimond, Thomas

Subject: RE: [EXT] Entry of Appearance filed today, AS 19-002

**\*\*EXTERNAL EMAIL\*\***

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Tom:

Our technical people would like to setup a meeting to discuss the facility/ adjusted standard petition, etc.

I propose we provide you with written questions/ issues beforehand and then have a conference call sometime next week.

How does that sound?



**Rex L. Gradeless**  
Assistant Counsel  
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**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) )

**ILLINOIS EPA'S FIRST REQUEST FOR  
PETITIONER TO PRODUCE DOCUMENTS**

COMES NOW the Illinois Environmental Protection Agency (hereafter "Illinois EPA"), by and through its counsel, and pursuant to 35 Ill. Adm. Code 101.616, directing EMERALD POLYMER ADDITIVES (hereafter "Petitioner") to produce for inspection, copying, reproduction, and photographing at the Illinois EPA, 1021 North Grand Ave East, Springfield, Illinois, 62794, twenty-eight (28) days after receipt of this request, the following documents, objects or tangible things:

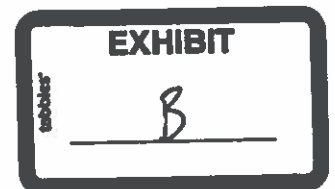
1. All statements (whether signed or unsigned, written or recorded) of persons having knowledge of any and all occurrences within the petition for adjusted standard, filed April 03, 2019 (hereafter "petition for adjusted standard"), and any and all other matters or facts within the petition for adjusted standard.

**RESPONSE:**

2. All other documents containing facts or opinions of persons having knowledge of any and all occurrences in the petition for adjusted standard or any other matters or facts within the petition for adjusted standard, including, but not limited to, notes or memoranda of conversations, untranscribed tapes, court reporter notes, and correspondence with such persons.

**RESPONSE:**

3. Any books, reports, documents, articles, or other information relied upon by



persons having knowledge of any and all occurrences within the petition for adjusted standard or any other matter or facts within the petition for adjusted standard.

**RESPONSE:**

4. All of Petitioner's financial balance sheets, and any annual shareholder reports, for fiscal years 2015, 2016, 2017, 2018, and 2019.

**RESPONSE:**

5. Pursuant to 35 Ill. Adm. Code 101.306(a), all documents and materials to be incorporated by the Pollution Control Board from *Noveon, Inc. for and Adjusted Standard from 35 Ill. Adm. Code 304.122, AS-2002-005*, and *Petition of Emerald Performance Materials LLC for an Adjusted Standard from 35 Ill. Adm. Code 304.122, AS-2013-002*.

**RESPONSE:**

6. All documents, electronically stored information, and tangible things that Petitioner may use to support its petition for adjusted standard. For each document, if it is not apparent from the face of the document, indicate what the document is and the date such report was made and documented.

**RESPONSE:**

7. All objects, photographs, videotapes, slides, motion pictures, diagrams, models, samples, drawings, or other things of a tangible nature relating to any and all matters in the petition for adjusted standard.

**RESPONSE:**

8. All documents relating to any investigation or examination of matters in the petition for adjusted standard.

**RESPONSE:**

9. All income tax records of Petitioner for the past six (6) years preceding the date of this request.

**RESPONSE:**

10. All reports and notes of experts, correspondence to or from experts, test reports, authorities, books, articles, or other documents relied upon by experts relating to the petition for adjusted standard.

**RESPONSE:**

11. All notes, diaries, or other documents prepared by anyone pertaining to the petition for adjusted standard.

**RESPONSE:**

12. All reports, investigation summaries, memoranda, letters, notes, books, articles, tests, texts, written communications, or other authorities relating to the petition for adjusted standard.

**RESPONSE:**

13. Documents in your possession or control relating to any and all administrative, bankruptcy, civil, or criminal matters in which Petitioner has been involved as a party or witness. For each such matter, identify the case caption, forum, and docket number; date of proceedings; presiding judge; name of court reporter who transcribed said proceedings, if it is not apparent from the face of the document; and capacity in which Petitioner was involved in the lawsuit (*i.e.*, plaintiff, defendant, witness for the plaintiff, witness for the defendant, expert witness, etc.).

**RESPONSE:**

14. Any documents that Petitioner may be introducing at hearing or using in any depositions in the case at bar that have not been disclosed and produced as otherwise requested



herein.

**RESPONSE:**

15. True and accurate copies of all notes, diaries, written correspondence, or other documentation related to or supporting Petitioner's claim that any of the alternatives are economically cost prohibitive and/or unreasonable. For each such document, if it is not apparent from the face, identify to whom the document was directed, from whom the document was directed, and the date the document was made.

**RESPONSE:**

16. True and accurate copies of all documents that Petitioner made or has acquired from any source, as they relate to the petition for adjusted standard. For each such document, if it is not apparent from the face, identify to whom the document was directed, from whom the document was directed, and the date the document was made or received.

**RESPONSE:**

17. All electronic mail; text messages; information generated on any type of computer or electronic device; documents; and correspondence that Petitioner had with any person relating to the petition for adjusted standard. For each such document, if it is not apparent from the face, identify to whom the document was directed, from whom the document was directed, and the date the document was made or received.

**RESPONSE:**

18. All pleadings, subpoenas, Freedom of Information Act requests, discovery requests, correspondence, or other written communications that Petitioner or its counsel has not previously served upon any Illinois EPA counsel who has entered an appearance in this case. Such documents include, but are not limited to, subpoenas issued for witnesses or documents.

**RESPONSE:**

19. The responses and documents obtained as a result of the Petitioner or its counsel sending the subpoenas, Freedom of Information Act requests, discovery requests, correspondence, or other written communications as requested in paragraph 18 above. In responding to this request to produce, Petitioner need not produce the documents that the Illinois EPA's counsel have sent or will send to Petitioner or their counsel.

**RESPONSE:**

20. All accountings of the time Petitioner's attorney claims is attributable to this matter. In responding, Petitioner need not identify the subject matter of the hours claimed.

**RESPONSE:**

21. True and accurate copies of all costs and expenses incurred by the Petitioner or any law firm that has represented Petitioner as a result of this case.

**RESPONSE:**

22. True and accurate copies of all contracts that Petitioner has with any attorney representing it in this case.

**RESPONSE:**

23. True and accurate copies of all documents used to respond to the interrogatories in this case. For each such document, specify for which interrogatory the document was used.

**RESPONSE:**

24. If you or your attorney claim a privilege to any document(s) responsive to the requests herein, produce a privilege log, identifying the document in some manner (*i.e.*, by Bates stamp number or other means); the reason for the claimed privilege; when the document was made; who authored the document; who has seen the document; and the location of the document (if a

document has been copied, state the location of all copies).

**RESPONSE:**

You are further requested to furnish along with your production, within 28 days after receipt of this request, an affidavit stating that the production is complete in accordance with the request, and if not complete, to list those items not produced, state the grounds for objection to their production, and give the name and address of the person having custody of such items.

Dated: September 6, 2019

Rex L. Gradeless, #6303411  
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Illinois Environmental Protection Agency  
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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 REQUEST WERE SUBMITTED ELECTRONICALLY

**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S FIRST REQUEST FOR PETITIONER TO PRODUCE DOCUMENTS** by e-mail upon Thomas W. Dimond at the e-mail address of Thomas.Dimond@icemiller.com and upon Kelsey Weyhing at the e-mail address of Kelsey.Weyhing@icemiller.com.

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 September 6, 2019.

/s/Rex L. Gradeless  
September 6, 2019

**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) )

**ILLINOIS EPA'S FIRST INTERROGATORIES**  
**DIRECTED TO PETITIONER**

The Petitioner, EMERALD POLYMER ADDITIVES (hereafter "Petitioner"), is hereby notified to answer the following interrogatories separately and fully in writing, under oath and within twenty-eight (28) days after service of these interrogatories, all in accordance with 35 Ill. Adm. Code 101.616 and 101.620.

1. State the full name (including any aliases and dates of those aliases), addresses, the dates of birth, and driver's license numbers of all persons who assisted in drafting responses and/or responding to the interrogatories.

**RESPONSE:**

2. State all authentic, credible, and relevant facts Petitioner has incorporated by reference from the records of *Petitioner of Noveon, Inc. for and Adjusted Standard from 35 Ill. Adm. Code 304.122, AS-2002-005*, and the record in *Petition of Emerald Performance Materials LLC for an Adjusted Standard from 35 Ill. Adm. Code 304.122, AS-2013-002*.

**RESPONSE:**

3. Provide Petitioner's assets, liabilities, and expenses, including operation and maintenance costs, for fiscal years 2015, 2016, 2017, 2018 and 2019.

**RESPONSE:**

4. Provide Petitioner's projected annual operation and maintenance costs for fiscal years 2020, 2021, 2022, 2023, and 2024.

**RESPONSE:**

5. On page 7 of the petition for adjusted standard, filed April 3, 2019 (hereafter "petition for adjusted standard"), Petitioner describes a "team comprised of facility personnel, consultants, and process improvement engineers from Emerald corporate services"; state the full name (including any aliases and dates of those aliases), addresses, the dates of birth, and driver's license numbers of all persons who have any knowledge about this team including, but not limited to, all the members of the team.

**RESPONSE:**

6. On page 24 of the petition for adjusted standard, Petitioner describes the granulated activated carbon alternative as not economically reasonable; state all of the facts that support this claim and the names of the person or persons who will testify to each fact.

**RESPONSE:**

7. On page 24 of the petition for adjusted standard, Petitioner describes the river water dilution alternative as "not economically feasible or economically reasonable"; state all of the facts that support this claim and the names of the person or persons who will testify to each fact.

**RESPONSE:**

8. On page 25 of the petition for adjusted standard, Petitioner describes the river water dilution alternative as not economically reasonable because, *inter alia*, "the economic cost is prohibitive". Provide the highest dollar figure that would not be cost prohibitive for the Petitioner.

**RESPONSE:**

9. List all other facts that are not in the petition for adjusted standard that Petitioner will rely upon in support of its petition.

**RESPONSE:**

10. State the fee arrangement between Petitioner and each of its attorneys. In responding to this interrogatory, be specific in the terms of the fee agreement and contractual provisions and to which attorney each refers.

**RESPONSE:**

11. State the contractual hourly fee each attorney representing Petitioner regularly and customarily charges their clients. For each such response, state to which attorney you are referring and the type of law for which this payment was made.

**RESPONSE:**

12. Provide the name and address of each witness, including lay witnesses, independent expert witnesses and controlled expert witnesses, who will testify on Petitioner's behalf at hearing and state the subject of each witness' testimony.

**RESPONSE:**

13. Provide the amount of ammonia attributable to Mexichem entering Petitioner's treatment plant.

**RESPONSE:**

Dated: September 6, 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

THESE REQUESTS WERE SUBMITTED ELECTRONICALLY



**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S FIRST INTERROGATORIES DIRECTED TO PETITIONER** by e-mail upon Thomas W. Dimond at the e-mail address of Thomas.Dimond@icemiller.com and upon Kelsey Weyhing at the e-mail address of Kelsey.Weyhing@icemiller.com.

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

That the number of pages in the e-mail transmission is five (5).

That the e-mail transmission took place before 4:30 p.m. on the date of September 6, 2019.

/s/Rex L. Gradeless

September 6, 2019



Electronic Filing: Received, Clerk's Office 12/20/2019  
**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782 -3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

December 18, 2019

Thomas Dimond  
Kelsey Weyhing  
Ice Miller LLP  
200 West Madison Street  
Suite 3500  
Chicago, IL 60606  
*Via Email and Hand Delivery*

**RE: *In the Matter of: Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 302.122(b), AS 19-002***

Mr. Dimond:

Please accept this letter as my final good faith attempt to secure discovery responses without court action pursuant to Rule 201(k) of the Illinois Supreme Court Rules. Please supplement discovery responses on or before close of business December 20, 2019. Otherwise, a motion to compel will be filed before the Pollution Control Board and here's why:

1. On June 7, 2019, the Illinois EPA requested that you provide financial information for Emerald Performance Materials, Emerald Kalama Manufacturing, and Emerald Polymer Additives. On June 18, 2019, at a meeting with the Illinois EPA this information was never provided.
2. On October 4, 2019, the Illinois EPA requested balance sheets, and any annual shareholder reports for fiscal years 2015-2019 (Request No. 4); assets, liabilities, and expenses including operation and maintenance costs for fiscal years 2015-2019 (Interrogatory No 3); and projected annual operation and maintenance costs for fiscal years 2020-2024 (Interrogatory No. 4).
3. On October 11, 2019, the Illinois EPA received two unaudited documents created by Emerald Performance Materials outside the scope of its regularly conducted business activity and at your direction. These two documents were entitled "statements of operations" and "balance sheets".
4. During a deposition on December 17, 2019, it became known Emerald Performance Materials servers as a "pool cash" hub to four entities and pays all the bills at the Henry plant. Therefore, the two unaudited documents submitted to the Illinois EPA were grossly misleading. Thus, the Illinois EPA again requested the following:
  - Emerald Performance Materials' balance sheets for FY 2015-2019;
  - Emerald Performance Materials' income statement for FY 2015-2019;
  - Emerald Performance Materials' cash flow statement for FY 2015-2019;
  - Emerald Performance Materials' annual audits for FY 2015-2019.





Electronic Filing: Received, Clerk's Office 12/20/2019  
**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

During the December 17, 2019, deposition, Emerald's Corporate Comptroller stated she could easily provide the requested information to the Illinois EPA and stated Emerald Performance Materials' annual audits were even emailed out its shareholders each year. Thus, the Illinois EPA once again made the request for this financial information.

At that time, you objected to the Illinois EPA obtaining this relevant financial information and stated the Illinois EPA would "never see the financial information or these audits". Further, you suggested that the Illinois EPA make another formal request so that you could formally reject that request. Frankly, the Illinois EPA has been extremely patient with these requests and has been making them since June 7, 2019. To be clear, the Illinois EPA has never requested that you manufacture a document for this case.

Please supplement your discovery responses as requested. Please do not generate any new documents and please provide the financial information as that information is maintained in the regular course of business. I am happy to discuss any of these issues with you. If you have any questions, please contact me at 217-782-5544.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex L. Gradeless", written over a horizontal line.

Rex L. Gradeless  
Assistant Counsel  
Division of Legal Counsel

**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)	)	

**SUBPOENA DUCES TECUM**

**TO: Amy Harding, Corporate Comptroller, Emerald Performance Materials, LLC, 1499 Southeast Tech Center Place, Suite 300 Vancouver, WA 98683.**

YOU ARE COMMANDED to appear, pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2018)) and 35 Ill. Adm. Code 101, Subpart F, and give testimony at a deposition in the above-captioned matter before a certified shorthand reporter at the Illinois Environmental Protection Agency, 1021 North grand Avenue East, Springfield, Illinois 62794, on January 3, 2020, at 9:00 a.m.

YOU ARE COMMANDED ALSO to bring the following:

**Emerald Performance Materials, LLC's balance sheet(s) for fiscal years 2015-2019; income statement(s) for fiscal years 2015-2019; cash flow statement(s) for fiscal years 2015-2019; and annual audits for fiscal years 2015-2019 in your possession or control.**

**PLEASE NOTE: NO DEPOSITION WILL BE TAKEN PROVIDED THE INFORMATION REQUESTED ABOVE IS PROVIDED BY January 3, 2020.**

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101.802.

Date: December 19, 2019

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

ENTER:



Don A. Brown, Clerk  
Illinois Pollution Control Board

Date: December 19, 2019



**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached **SUBPOENA DUCES TECUM** 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, and upon Carol Webb at the e-mail address of Carol.Webb@illinois.Gov.

That I have served the attached **SUBPOENA DUCES TECUM** upon **AMY HARDING**, by placing a true copy in an envelope via U.S. Postal Service (Express Delivery) duly addressed to Amy Harding, Emerald Performance Materials, LLC, 1499 Southeast Tech Center Place, Suite 300 Vancouver, WA 98683, bearing proper prepaid postage in the United States mail at Springfield, Illinois on December 19, 2019.

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

That the number of pages in the e-mail transmission is two (2).

That the e-mail transmission, and placing the envelop into U.S. Postal Service, took place before 4:30 p.m. on the date of December 19, 2019.

/s/Rex L. Gradeless  
December 19, 2019



---

Signed and sworn to before me

December 19, 2019.



(Notary Public)



Name: Rex Gradeless  
Attorney for: Illinois Environmental Protection Agency  
Address: 1021 North Grand Avenue East, Springfield, IL 62794-9276  
Telephone: (217) 782-5544

**Gradeless, Rex**

---

**From:** Gradeless, Rex  
**Sent:** Friday, December 20, 2019 3:05 PM  
**To:** Paula.Newton@icemiller.com  
**Cc:** Thomas.Dimond@icemiller.com; Kelsey.Weyhing@icemiller.com  
**Subject:** RE: In the matter of: Petition of Emerald Polymer Additives, LLC - AS 2019-002

All:

Given your letter relating to the outstanding discovery, I'm left with no choice but to move to compel the information that your client has freely shared to others via email. As you know, the bar for discovery is extremely low in the state of Illinois and your objections seem focused on the admissibility of this evidence - evidence that I've not seen. The financial information of your client's cash hub is relevant to the subject matter, especially economic reasonableness, involved in the pending action and I'm sorry your client views this differently, as articulated in your letter.

To be clear: we are entitled to get a complete financial picture of your client when it has claimed alternatives are cost prohibitive in its own petition.

Bests,



---

**Rex L. Gradeless**  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
Office: 217-782-5544 | Fax: 217-782-9807

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---

**From:** Paula.Newton@icemiller.com <Paula.Newton@icemiller.com>  
**Sent:** Friday, December 20, 2019 12:29 PM  
**To:** Gradeless, Rex <Rex.Gradeless@illinois.gov>  
**Cc:** Thomas.Dimond@icemiller.com; Kelsey.Weyhing@icemiller.com  
**Subject:** [External] In the matter of: Petition of Emerald Polymer Additives, LLC - AS 2019-002

Please see the attached.

Regards,



Paula Newton

# IceMiller

LEGAL COUNSEL

Paula Newton

Legal Assistant to Adam Calisoff, Michael Chabraja,  
Tom Dimond, Vanja Galligan, Amir Ovcina, Tiffany Tran,  
J.C. Brown and Clare Donohue

Paula.Newton@icemiller.com

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To learn more about the firm and its services, visit us at  
[icemiller.com](http://icemiller.com)

\*\*\*\*\*  
\*\*\*\*\*

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Thank you.

ICE MILLER LLP

\*\*\*\*\*  
\*\*\*\*\*



200 W. Madison Street | Suite 3500 | Chicago, IL 60606-3417

December 20, 2019

WRITER'S DIRECT NUMBER: (312) 726-7125  
DIRECT FAX: (312) 726-8103  
EMAIL: [Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com)

**Via Electronic Mail**

Rex L. Gradeless  
Assistant Counsel  
[rex.gradeless@illinois.gov](mailto:rex.gradeless@illinois.gov)  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, IL 62794

***RE: In the Matter of: Petition of Emerald Polymer Additives, LLC for an Adjusted Standard, AS 19-002***

Dear Rex:

I have reviewed your letter of December 18. It suffers from several deficiencies. Our response is as follows.

Your June 7 email to me requesting certain information for Emerald Performance Materials ("EPM"), Emerald Kalama Manufacturing and Emerald was not a document request pursuant to the Board procedural rules. The email is accurately characterized as a request related to a settlement meeting. That is an entirely different animal than a request for the production of documents in accordance with the Board rules. Subsequent events have shown that you did not consider it a discovery request either. If you had considered it so, you would logically have followed up with me on or about July 5 as to why we had not provided the documents. You did not. Nor did you demand documents pursuant to the June 7 email at any other time. Indeed, until your letter of December 18, you have never asserted that the June 7 email was a document request under the Board rules. I am stunned that you make that assertion now. It is completely contrary to the facts.

Your letter states that the Agency requested certain records on October 4. I assume that is a clerical error on your part. My pleadings show that the Agency served requests to produce documents and interrogatories on September 6 and then Emerald responded on October 4. The Agency's discovery requests for financial information (Request 4 and Interrogatories 3 and 4) requested "Petitioner's" documents and information. Petitioner is Emerald Polymer Additives, LLC (Emerald) and those are precisely the documents and information we provided. As we explained, Emerald does not produce annual shareholder reports, which should hardly be surprising because it is not a publicly traded company. When we provided those documents on October 11, they were clearly labeled as being documents for Emerald Polymer Additives. Given your June 7 email, the Agency clearly understood that Emerald was a different entity from



Rex L. Gradeless  
December 20, 2019  
Page 2

EPM, as was also apparent from our Petition. So, waiting until now to request additional documents seems to betray an effort to derail the hearing rather than a legitimate request.

Further, as we explained in our responses, we produced information over our objection that the information sought by the Agency is not relevant or reasonably calculated to lead to the discovery of admissible evidence. The Agency has never explained how the information it sought is relevant or could lead to admissible evidence. The Agency seems to be confusing the standards for issuance of an adjusted standard with those for issuance of a variance. Issuance of a variance requires proof that complying with a general standard would "impose an arbitrary and unreasonable hardship," 415 ILCS 5/35(a), for a regulated entity. In a variance proceeding, the financial impact of a regulation on an individual entity might be relevant. In contrast, an adjusted standard under Section 28.1 of the Act is to be justified consistent with Section 27(a), which directs the Board to "take into account . . . [the] economic reasonableness of measuring or reducing the particular type of pollution." 415 ILCS 5/27(a). As the Appellate Court has held, that test involves a cost-benefit analysis comparing the costs of implementing controls against the public benefits to be derived from the controls. *E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741, 751 (2d Dist. 1999). You have never provided us a citation to another case or to anything that disputes this holding or indicates that an individual entity's financial condition is relevant in an adjusted standard proceeding. Nor have you explained how a listing of Emerald's assets, liabilities and expenses (even operating and maintenance expenses) (Interrogatory 3) would be relevant. Every building, every tank, every piece of equipment at the Henry Plant and every account receivable from a customer is an asset. Every account payable to a customer and every accrued vacation day for every employee is a liability. The documents provided gave the Agency the aggregate spending on maintenance for 2015-2019. I cannot think of any way that any of that tells the Board one iota about the costs or benefit of alternate technologies to treat ammonia.

Moreover, we are not even sure the Agency has fully considered the implications of its position. Your position suggests that companies with the best financial condition (however that would be defined) would never be allowed to emit any pollution (because they have the resources to control it) whereas tiny companies with bad credit could pollute at will. That would create an entirely unlevel playing field and actually encourage companies to operate at the margin of financial viability. Surely that is not what the Agency wants.

Your letter also makes some inaccurate statements about the documents produced and in other ways casts unwarranted aspersions. First, the documents are not grossly misleading. They accurately reflect the financial status of Emerald Polymer Additives, as testimony verified. Second, those documents were not really produced "at my direction." In fact, they were produced to satisfy the Agency's request for "Petitioner's" information. My only role in the matter was to help explain to Emerald what the Agency had requested and to ensure that the documents met what the Agency requested. Not only is that an appropriate role for counsel to play, it is required. Third, because the Agency requested information in a format not ordinarily produced, Emerald had to choose between producing nothing or something. While the specific documents produced are not routine, the information upon which they were based (i.e., the dollar

Rex L. Gradeless  
December 20, 2019  
Page 3

amounts) is produced and maintained by Emerald in the ordinary course of business. In that light, it is more than a little ironic that the Agency now complains that the documents were created to satisfy its request.

Your suggestion that EPM's pooled cash management for its subsidiaries changes anything indicates a complete misunderstanding of modern financial management. As witnesses explained under oath, the fact that cash is pooled does not mean that the cash is not tracked and properly accounted for each subsidiary. To the contrary, each transaction is properly accounted for and reflected in the Intercompany line item on the subsidiary accounts. In addition, at least one witness (and both if memory serves correctly) testified that this type of centralized cash system is common and routine in modern corporate structures. That is entirely consistent with general publications on the topic. Bragg, Steven M. *Corporate Cash Management, A Treasurer's Guide*. Accounting Tools, Inc., 2017.

Your request that Emerald supplement its production with information for EPM mischaracterizes your own requests. The Agency requested "Petitioner's" information. It never requested information for EPM. Until your December 19 subpoena, Emerald has never received a request to produce information about EPM. Putting aside the question of whether the Board's subpoena authority applies outside the State of Illinois (I rather doubt it), the relevance objection explained above applies doubly to EPM's financial information. You have never explained how EPM's balance sheet or income statement (or even Emerald's) is relevant to this proceeding. That information has no bearing on the costs and benefits of comparing alternate approaches to controlling ammonia discharges in a wastewater treatment system with nitrification inhibitors.

In summary, we do not think there is a discovery dispute because the Agency's only request for EPM information is via a subpoena of doubtful validity for which the time to respond, even if it were valid, has not even passed. Even as to the subpoena, our objections are proper. For a Rule 201(k) process to resolve discovery disputes to work, both parties have to participate and explain their positions. We have done so on multiple occasions. The Agency has not. That the Agency issued a discovery request on September 6 does not mean that it is entitled to the information requested. And, merely calling the information requested "relevant" does not make it so. If you have case law holding that the financial condition of an entity requesting an adjusted standard is relevant to the economic reasonableness test, please provide it. Until then, your attempt to manufacture a discovery dispute and resolve it is woefully inadequate.

Sincerely,

ICE MILLER LLP

*Thomas W. Dimond* <sup>KWW</sup>

Thomas W. Dimond

cc: Kelsey Weyhing

**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S MOTION TO COMPEL** 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 **ILLINOIS EPA'S MOTION TO COMPEL** 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 December 20, 2019.

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

That the number of pages in the e-mail transmission is thirty-five (35).

That the e-mail transmission took place before 4:30 p.m. on the date of December 20, 2019.

/s/Rex L. Gradeless

December 20, 2019