

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
Petition of Emerald Polymer)
)
Additives, LLC for an Adjusted) AS 19-002
)
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 **Emerald's Response to Illinois EPA's Motion to Use Depositions as Evidence**, copies of which are attached herewith and served upon you.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: January 3, 2020

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

Thomas W. Dimond
Kelsey Weyhing
ICE MILLER LLP
200 West Madison, Suite 3500
Chicago, Illinois 60606
(312) 726-1567
Thomas.Dimond@icemiller.com
Kelsey.Weyhing@icemiller.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**EMERALD'S RESPONSE TO
ILLINOIS EPA'S MOTION TO USE DEPOSITIONS AS EVIDENCE**

Emerald Polymer Additives, LLC ("Emerald") hereby responds to Illinois EPA's Motion to Use Depositions as Evidence (the "Motion"). The Motion should be denied. In support thereof, Emerald states as follows:

The Depositions at Issue Were Not Evidence Depositions.

1. The Motion fails to pass the threshold question of whether the depositions of Ms. Harding and Messrs. Gotch and Wrobel were *evidence* depositions. The procedural rules for evidence depositions are quite specific to ensure that everyone is on the same page. The Agency did not follow the rules, and thus the Motion fails.

2. Supreme Court Rule 202 requires that the "notice, order, or stipulation to take a deposition *shall* specify whether the deposition is to be a discovery deposition *or* an evidence deposition." (emphasis supplied). The rule continues, "If both discovery and evidence depositions are desired of the same witness *they shall be taken separately, unless the parties stipulate otherwise* or the court orders otherwise upon notice and motion." S.Ct. Rule 202 (emphasis supplied).

3. Agency counsel asserts that a verbal stipulation was reached on November 19 and confirmed by email on November 20. Motion, ¶¶ 5-6. The undersigned counsel for Emerald did not agree to such a stipulation verbally on November 19 or any other time, and the November

19-20 email exchange, Motion, Ex. A, does not reflect a stipulation that the depositions were evidence depositions or to *combine* discovery and evidence depositions into one. A stipulation is not the same as a failure to object. It means an affirmative agreement by both parties on a point at issue. The November 20 email from undersigned counsel reflects no stipulation that the depositions were to be evidence depositions or to *combine* discovery and evidence depositions.

4. Regardless, each deposition notice states (in the fine print, not in the heading where it should be) that the deposition is to be “for the purpose of discovery and/or for use in evidence.” Motion, Ex. C. A proper deposition notice announces the purpose of the deposition in the heading. It is not to be hidden in the fine print.

5. Even if the notices adequately announce the desire for a combined purpose deposition, the Agency offered no evidence of a stipulation after delivery of the notices. Undersigned counsel reviewed his email files. Those emails reflect that Agency counsel sent the deposition notices, Motion Ex. C, on December 3 at 11:55 am. That is after the December 3, 9:12 am email sent by Agency counsel, *see* Motion, Ex. B, which in any event deals with dates and timing rather than the purpose of any depositions. Undersigned counsel has reviewed his email files and found no emails subsequent to December 3, 11:55 am and prior to the depositions that addresses the purpose of any of the depositions or reflects any stipulation by the parties to hold combined purpose depositions.

6. Nor is it appropriate to look to page 27 of one of the three deposition transcripts to describe the purpose of all three depositions. Motion, ¶ 14. The nature of the deposition should be stated at the outset. It was not at any of these three depositions. *See* Exhibit A (the opening pages of each deposition transcript with nary a mention of the purpose of the deposition). In fact, the word concordances at the end of the Gotch and Wrobel depositions indicate the word

“evidence” was not even transcribed. The nature of objections made during Harding’s deposition further indicates that Emerald’s counsel considered the depositions to be for discovery. *See* Exhibit A, Harding Dep. Tr., 52:7-10, 62:18-21.

7. Thus, the Agency has no evidence of a stipulation that the depositions were to be evidence depositions or, more to the point given the deposition notices, were to be *combined* discovery and evidence depositions. There was none. Accordingly, an evidence deposition would have to be taken separately in accordance with Supreme Court Rule 202, and these depositions were not *separate* evidence depositions. The Motion should be denied.

The Harding and Gotch Depositions Are Not Relevant.

8. As to the Harding and Gotch depositions, the Motion should also be denied because the deposition testimony is not relevant to the granting of an adjusted standard.

9. Those two depositions only addressed financial information about Emerald or its corporate parent, Emerald Performance Materials, LLC (“EPM”), or EPM’s investors and the Emerald financial statements that were produced to the Agency over objection. That information is not relevant to any contested issue for granting an adjusted standard for the reasons set forth in Emerald’s Motion to the Hearing Officer to Exclude Evidence and Argument at Hearing (“Emerald’s Motion to Exclude”), which we incorporate in full. For an adjusted standard, the Board is to consider the economic reasonableness of measuring or reducing the particular type of pollution. This test involves a cost-benefit analysis comparing the costs of implementing controls against the public benefits to be derived from those controls. Emerald’s Motion to Exclude, ¶¶ 3-6 (citing cases). A company's financial status is not relevant to that inquiry.

10. The Agency begins its argument as to relevance by saying that Emerald argues that the ammonia treatment alternatives "are just not affordable," Agency's Response Opposing Petitioner’s Motion to Exclude Relevant Evidence, 6 (the “Agency Response”) and that the

Board has found affordability an appropriate factor. *Id.*, 9. Neither statement is true. Emerald's argument is that the alternatives that are technically feasible are economically unreasonable based on the cost estimates and comparisons performed by Houston Flippin. *See* Petitioner's Hearing Exhibits 9, 11 and 12. Emerald has not argued that alternatives are not "affordable" (whatever the Agency means by that), and the Agency has pointed to no Board or court decisions stating that "affordability" is a factor in evaluating economic reasonableness.

11. To the contrary, the Appellate Court held that the economic reasonableness test "has involved measuring the cost of implementing pollution control technology against the benefit to the public in reducing pollution." *EPA v. Pollution Control Board*, 308 Ill. App. 3d 741, 751 (2d Dist. 1999). The court said nothing about affordability. In another case, the Board distinguished questions of affordability from economic reasonableness finding the latter involved weighing costs of controls against benefits of compliance, even if the benefits were not easily quantified. *In the Matter of: Proposed Site Specific Water Pollution Rules and Regulations applicable to Citizens Utilities Company of Illinois Discharge to Lily Cache Creek*, R81-19, Opinion and Order of the Board, 4 (July 3, 1990). In rejecting Citizens Utilities' site-specific rule, the Board did not consider its financial statements or condition.

12. The Board outright rejected reliance on a company's financial information to assess economic reasonableness in another matter. *In the Matter of: Proposed Site-Specific Rule Change for Reilly Chemical Corp., Granite City Facility: 35 Ill. Adm. Code 307.1102*, R88-9, Opinion and Order of the Board, (Oct. 18, 1989) (hereafter *Reilly Chemical*). Reilly sought a site-specific rule related to mercury in its wastewater discharge. *Id.*, 1. It submitted confidential financial information to the Board, but the Board found it unnecessary to consider that information in assessing economic reasonableness. "The determination of economic

reasonableness will be based on the costs of compliance with respect to the environmental impact and *not on petitioner's ability to afford compliance.*" *Id.*, 6 (emphasis supplied). The Board then weighed the cost of removal per gram of mercury, *id.*, 6-7, against the "undetermined detrimental effect the higher concentration has on water quality or aquatic life," *id.*, 8, and found the general rule economically unreasonable as applied. *Id.* Even the Agency agreed with this manner of assessing economic reasonableness. *Id.*

13. Emerald makes a similar argument. We have estimated the alternative costs in terms of cost per amount of ammonia reduced, compared that estimate against costs incurred by others and weighed that comparison against the sampling data that shows no environmental harm from the ammonia in the discharge. *See e.g.* Petitioner's Hearing Ex. 12, pp. 11-12.

14. The Agency seems to assert that the Board considered "affordability" as a factor in economic reasonableness in the adoption of the clean construction and demolition debris ("CCDD") regulations. Agency Response, 9. That is not true. In that rulemaking, the salient issue for present purposes was whether it would be economically reasonable to require groundwater monitoring by CCDD facilities. The Board heard testimony that adopting the groundwater monitoring requirement would impose high costs and might make facilities close and then weighed that cost against its conclusion that the less costly alternative of relying on soil certification and testing adequately protected groundwater. *County of Will v. Pollution Control Board*, 2019 IL 122798, ¶¶ 59-61 (2019). The Supreme Court held that the Board's balancing of control costs versus environmental benefits was not arbitrary and capricious. And, it did so without any reference to the financial statements or condition of any particular company and whether or not any company could afford to monitor groundwater. Neither the Board nor the Supreme Court considered affordability.

15. Even cases involving municipalities assess economic reasonableness by a comparative weighing of benefits and costs of compliance. In one matter, a municipality sought relief from combined sewer overflow regulations. The Board did not ask Havana to provide financial statements to assess whether it could “afford” compliance in some abstract sense. The Board weighed Havana’s evidence that its cost of full compliance (expressed as a user charge) was higher than the range generally deemed reasonable, evidence that Havana had evaluated partial compliance alternatives and also the evidence of a lack of significant detrimental environmental effect from its overflows to conclude that compliance was economically unreasonable. *In the Matter of: Petition of the City of Havana for a Site-Specific Rulemaking*, R88-25, Opinion and Order of the Board, pp. 108-286 to 108-287 (Feb. 22, 1990) (hereafter, *Havana*). While the Board referenced a range of reasonable user charge “affordability,” it did not assess economic reasonableness by looking at the financial statements or financial condition of Havana. There is no mention of that in the case at all. Rather, it compared Havana’s estimated costs to those of similarly situated cities.

16. In a similar vein, the Board found a city’s compliance with the rule of general applicability economically reasonable when the cost of compliance was equal to the city’s proposed alternative and either alternative would achieve compliance. *In the Matter of: Petition of the City of Tuscola to Amend Regulations Pertaining to Water Pollution*, R83-23, Opinion and Order of the Board, 11-12 (April 21, 1988). Just as in *Havana*, the Board relied on a comparison of costs expressed as user fees and did not rely on Tuscola’s financial statements or condition to assess economic reasonableness.

17. Not a single one of the Agency’s cases holds that a company’s financial statements or condition are relevant to the economic reasonableness test. Most of the cases

outright reject that position and for good reasons since it would create an unlevel playing field. Having failed on this score, the Agency launches a series of arguments that have little to do with whether the depositions of Ms. Harding and Mr. Gotch or the financial information are admissible. We refute those in turn.

18. The Agency seems to argue that the Board has used a cost per pound yardstick only in cases involving air pollution. Agency Response, 8 and n. 2. But, the Board has used similar yardsticks in water cases, too. *Reilly Chemical*, 6-7 (cost per gram of mercury removed from wastewater); *Havana*, 108-286 (estimated costs expressed as a monthly user charge in sewer overflow case). Moreover, the Agency offers no argument for why economic reasonableness should mean something different in water cases versus air cases. Nothing in Sections 27 or 28.1 of the Act creates such a distinction.

19. The Agency also argues that Emerald's mixing zone is improper and that its discharge is toxic. Agency Response, 6, 12. Two problems with these arguments. First, the Board has held otherwise, AS13-002, Opinion and Order of the Board, 55-57 & 61-62 (Apr. 16, 2015), and the subsequent WET toxicity tests and water quality sampling of the Illinois River show the discharge is not toxic. Petitioner's Hearing Exhibit 1, ¶¶ 38-40 (Written Testimony of Galen Hathcock). The Agency is not free to ignore the Board's rulings or the evidence. Second, even if the Agency's statements were true, introducing Emerald's financial information into evidence would not clear up whether the mixing zone is proper or the discharge is toxic. This is one of those arguments that seems unconnected to the question of admissibility.

20. The Agency argues next that Emerald must look at partial compliance alternatives and combinations of strategies. Agency Response, 9 (and then for some reason, again at 15-16). The Board previously found that Emerald has "achieved reductions of ammonia in its effluent

through a combination of strategies." AS13-002, Opinion and Order of the Board, 56. Emerald has done so again in this proceeding. *See* Petitioner's Hearing Exhibit, 12, pps. 8 & 10 (explaining that the performance of tertiary nitrification could be compromised by routine upsets and operational variations and that land application would achieve only partial compliance). More to the point here, the Agency does not explain how evidence of Emerald's *past* financial performance or the testimony of Ms. Harding or Mr. Gotch would illuminate the estimated *future* costs or benefits of any partial compliance alternative or combination of alternatives. This is not an argument for admitting the depositions or financial statements.

21. Next, the Agency argues that the Board should consider non-speculative benefits from implementing control technologies. Agency Response 9-10. The Agency says the Board should consider the *future* benefits of not paying experts or legal fees or the avoidance of *future* enforcement actions. But, the Agency never explains how Emerald's *past* financial statement information would prove what those *future* expenses might be or why Emerald would face a *future* enforcement action if the adjusted standard is renewed. Emerald doubts that a non-speculative estimate of those future expenses can be made, and in any event, those expenses depend a lot on how intransigent the Agency is in opposing the relief. Because the expenses are speculative, the Board need not consider them. *EPA*, 308 Ill. App. 3d at 751-52.

22. Next, the Agency asserts that if an ammonia-reducing project also improves efficiency in the plant that should be taken into account. Agency Response, 10. If the efficiencies were material and could be quantified without speculation, Emerald would not disagree. But, the Agency never shows how the testimony of Ms. Harding or Mr. Gotch or Emerald's financial statements would show such an efficiency or provide evidence to quantify the value of the efficiency. As a matter of fact, they do not because the financial statements and

the related testimony are backward looking and do not estimate what would happen in the future if some different action was taken. The Agency's point is so abstract as to be pointless.

23. The Agency's next gambit is to say the Board should consider whether Emerald could secure an interest-free loan to implement one of the alternatives. Agency Response, 10. The suggestion is speculative because it points to no source of such a loan, and Emerald is aware of none. It can therefore be disregarded. 308 Ill. App. 3d at 751-52. Once again, though, the Agency has completely failed to show how Emerald's *past* financial data would be relevant to the benefits of such a (speculative) loan to be secured in the *future*. If the Agency could actually identify a source for such a loan (we doubt they can), at most, it would cause Emerald to ask Mr. Flippin to redo his calculations assuming a different interest rate. But, Emerald would still have to pay the costs of the alternative project, and the interest rate change would make little difference in the cost comparison.

24. The Agency's next broadside is an assertion that Emerald must account for contributions to its treatment costs by Mexichem, which sends its wastewater to the treatment system operated by Emerald. Agency Response, 10-11. The Agency's statement that Emerald is "profiting" from an adjusted standard is a lie. Mexichem contributes far less than the full costs of wastewater treatment for the combined facilities. Moreover, the cost of any alternative will be borne entirely by Emerald and Mexichem. When it comes to assessing economic reasonableness of any treatment alternative, the question is not which company bears how much of the expense. The question is whether the total expense of the alternative outweighs any benefits to the environment. See ¶¶ 11-12, above. Emerald has repeatedly shown that the environment is not being harmed and that the costs of the alternatives (not to mention the negative environmental side effects arising from them) are much higher than other sources of ammonia incur.

25. The Agency argues that *Central Illinois Light Co. v. Pollution Control Board*, 159 Ill. App. 3d 389 (1987) supports its position but misunderstands the case. Agency Response, 11. CILCO sought a site-specific rule for total suspended solids in wastewater. *Id.*, 389-390. While CILCO estimated costs of achieving compliance, it "submitted no evidence to establish a comparative basis upon which the Board could determine the reasonableness of the cost of any" alternatives. *Id.*, 391. It merely asserted that the estimated control costs would be 17% of its total pollution control costs and offered conclusory testimony that the costs were unreasonable. *Id.*, 394-95. The Appellate Court affirmed the Board's rejection of CILCO's attempt to judge economic reasonableness solely in relationship to its own finances and operations. The Agency's obsession with Emerald's financial information, Agency Response, 4-5, ¶¶ 10, 16, and 17, would not provide the kind of comparison that *CILCO* requires and would be rejected.

26. The Agency's harping on who bears the cost as between Emerald, EPM and EPM's investors, Agency Response 11-12, also misses the point. In some sense, they all bear the cost: Emerald bears it directly, and EPM and its investors bear it indirectly. The question is not who bears the cost; the question is what is the total cost of an alternative and is it reasonable in comparison to what others pay to control ammonia considering whether there are any environmental benefits. Moreover, again, the Agency never explains how introducing Emerald's *past* financial statements or testimony related to them, would be relevant to the inquiry of what the total costs or benefits would be from a treatment alternative.

27. The Agency's next salvo is about a facility expansion project undertaken by an EPM facility in Rotterdam, The Netherlands. Agency Response, 12. How a project in Rotterdam that expanded production capacity, had a positive revenue impact and has nothing to do with controlling ammonia in wastewater has any relationship to alternative ammonia-control

projects in Henry, Illinois that would have no positive revenue impact is incomprehensible. As near as we can tell, this is just part of the Agency's tactic to throw big numbers against a wall and hope the Board can make some sense of it. *See* ¶ 30, below.

28. Next, the Agency goes on for nearly a page and a half about a USEPA guidance document and a cut and paste from its Recommendation about other supposed ammonia-reduction projects that then morphs into discussing loans again. Agency Response, 13-15. Emerald looks forward to rebutting these assertions at hearing, but fails to understand how they relate to the admissibility of its financial information. None of this shows how the depositions of Ms. Harding or Mr. Gotch or anyone's financial statements are admissible. Why the Agency went on so long without connecting up the discussion to admissibility is a mystery.

29. The above refutation of each Agency argument is, Emerald fears, a preview of the hearing itself. Many of the Agency's arguments for admitting the financial information make no sense at all. The Agency's Response swerves from misinterpretations of case law to incoherent arguments that have nothing to do with the financial information and deposition testimony.

30. Finally, the Agency has no apparent plan as to how it would introduce evidence as to the *meaning* of the financial information to the economic reasonableness test. In that regard, the CCDD hearings are instructive. The Board heard the testimony of Jim Huff, an experienced expert who has testified before the Board frequently, that adopting the groundwater monitoring requirement would impose high costs and might make facilities close. *In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations: Proposed Amendments to 35 Ill. Adm. Cod 1100*, R12-9, Opinion and Order of the Board, 32, 43 (Feb. 2, 2012). Whether Mr. Huff was right, he at least offered the Board an opinion about the *meaning* of the costs of compliance. The Agency has no such witness. As near as Emerald can tell, the

Agency's plan at hearing is no more sophisticated than the Agency Response. It merely intends to throw a bunch of big numbers against a wall, *see e.g.*, Agency Response, 4-5, ¶¶ 10, 16 and 17, have its counsel rail about the numbers and then hope that the Board will sort it all out in the Agency's favor. That is not a basis for admitting evidence and it is no way to conduct a hearing.

WHEREFORE, Emerald requests that Illinois EPA's Motion to Use Depositions as Evidence be denied.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: January 3, 2020

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

Thomas W. Dimond
Kelsey Weyhing
ICE MILLER LLP
200 West Madison, Suite 3500
Chicago, Illinois 60606
(312) 726-1567
Thomas.Dimond@icemiller.com
Kelsey.Weyhing@icemiller.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on January 3, 2020, I have served the attached **Notice of Electronic Filing and Emerald's Response to Illinois EPA's Motion to Use Depositions as Evidence** upon the following persons by electronic mail:

Rex L. Gradeless
Christine Zeivel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
Rex.Gradeless@Illinois.gov
Christine.Zeivel@Illinois.gov

Don Brown, Clerk, Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601
Don.Brown@Illinois.gov

Carol Webb, Hearing Office, Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, Illinois 62794-9274
Carol.Webb@Illinois.gov

/s/ Thomas W. Dimond

GROUP EXHIBIT A

EDWARD GOTCH 12/13/2019

Page 2

1 APPEARANCES:

2 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

3 BY: MR. REX L. GRADELESS

4 1021 North Grand Avenue East

5 Springfield, Illinois 62702

6 217.782.5544

7 rex.gradeless@illinois.gov

8 appeared on behalf of the Illinois
Environmental Protection Agency;

9 ICE MILLER LLP

10 BY: MR. THOMAS W. DIMOND

11 200 West Madison Street, Suite 3500

12 Chicago, Illinois 60606-3417

13 312.726.7125

14 thomas.dimond@icemiller.com

15 appeared on behalf of Emerald Polymer
16 Additives, LLC.

17 * * * * *

18

19

20

21

22

23

24

Reported by: Valerie M. Calabria, CSR, RPR

EDWARD GOTCH 12/13/2019

1	INDEX	
2	WITNESS	EXAMINATION
3	EDWARD GOTCH	
4	BY MR. GRADELESS	4
5	BY MR. DIMOND	50
6		
7	DEPOSITION EXHIBITS	
8	NUMBER/DESCRIPTION	IDENTIFIED
9		
10	NO EXHIBITS MARKED	
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

EDWARD GOTCH 12/13/2019

Page 4

1 (Witness duly sworn.)

2 EDWARD GOTCH,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. GRADELESS:

7 Q. Ed, again, as Mr. Dimond said, my name
8 is Rex Gradeless. I'm from the Illinois EPA. And
9 we have a court reporter that's in the room that's
10 taking down everything we say and everything we
11 hear from you on the phone.

12 Let me start by asking, have you ever
13 taken a deposition before?

14 A. I have, yes.

15 Q. And how many times before?

16 A. I believe I've been deposed one other
17 time.

18 Q. How long ago was that one?

19 A. I believe three or four years ago.

20 Q. Was it -- what was that generally
21 related to?

22 A. We were involved in litigation with a
23 third-party warehouse provider with allegations of
24 breach of contract, us alleging versus them.

EDWARD GOTCH 12/13/2019

Page 5

1 Q. Okay. Well, thank you for that.

2 I can tell you the rules of the
3 deposition are pretty much still the same. Again,
4 the court reporter is going to take down everything
5 we say, and we have to obviously -- it might be
6 better that we have a telephone here because all of
7 our responses need to be audible. And sometimes
8 when we're having a conversation, you and I may say
9 uh-huh and uhn-uhn. Well, we've got to make sure
10 that we're clear about our answers because it
11 doesn't come out very well when the court reporter
12 and we go back to read it later.

13 Does that make sense?

14 A. That's clear, yes.

15 Q. Otherwise, I think if you have any
16 questions about my questions, feel free to ask
17 them. And I will just try to be quiet so that we
18 can hear your response. And I appreciate you
19 taking the time to answer some of the questions.

20 A. Certainly.

21 Q. Can you state your name for us and spell
22 it?

23 A. Sure. Edward Thomas Gotch, Jr.
24 Standard spelling for Edward, E-d-w-a-r-d.

AMY HARDING 12/17/2019

Page 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

WITNESS: AMY HARDING

EXAMINATION BY:

PAGE:

MR. GRADELESS

4

MR. HARDING

E X H I B I T S

Exhibit No. 1

4

(Attached)

CERTIFICATE OF REPORTER

78

AMY HARDING 12/17/2019

Page 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A P P E A R A N C E S

ICE MILLER, LLP
BY: MR. THOMAS W. DIMOND
200 West Madison
Suite 3500
Chicago, IL 60606
312-726-7125
Thomas.Dimond@icemiller.com
Appeared on behalf of Petitioner
Emerald Polymer Additives;

DIVISION OF LEGAL COUNSEL
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
BY: MR. REX GRADELESS
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62702
217-782-5544
Rex.Gradeless@Illinois.gov
Appeared on behalf of Respondent EPA.

ALSO PRESENT:
MIDWEST LITIGATION SERVICES
Kathy Johnson, Court Reporter
711 North 11th Street
St. Louis, Missouri 63101
314-644-2191,

AMY HARDING 12/17/2019

Page 4

1 (Exhibit No. 1 marked for
2 identification.)

3 (Deposition start time: 11:01 a.m.)
4 (Witness sworn.)

5 AMY HARDING,
6 being first duly sworn on oath, was examined and
7 testified as follows:

8 EXAMINATION BY
9 MR. GRADELESS:

10 Q. This is the deposition of Amy Harding in
11 the matter of the petition for Emerald Polymer
12 Additives, LLC, for an adjusted standard before
13 the Illinois Pollution Control Board, case number
14 AS 19-002. Can you please state your name for the
15 record?

16 A. Amy Harding.

17 Q. I'm sorry. And spelling it. Spell it
18 for us.

19 A. Yes. A-m-y. And Harding is
20 H-a-r-d-i-n-g.

21 Q. Now, Amy, my name is Rex Gradeless, and
22 I'm from the Illinois EPA. Have you ever had a
23 deposition before?

24 A. Never.

1 Q. Okay. Well, let me tell you the ground
2 rules here so that we can all be on the same page.

3 A. Okay.

4 Q. This is a telephone deposition so we're
5 going to have to be very careful about talking
6 over one another. There's a court reporter here
7 who is taking down everything we say, the answers,
8 the responses, any objections that may or may not
9 occur, and so it's very important that we answer
10 everything with a clear yes or no answer or a, you
11 know, an audible response.

12 Sometimes when we engage in
13 conversations we may say uh-huh and huh-uh, and
14 when the court reporter -- when the court
15 reporter, you know, types that out, when you go
16 read it later it's kind of sometimes unclear. So
17 do you understand that?

18 A. I understand.

19 Q. You've passed the first test. Second,
20 from time to time the attorneys sometimes will
21 make objections on the record. And that doesn't
22 mean anything -- anybody did anything wrong --
23 we're just putting something on the record and
24 objecting. And more likely than not you'll still

AMY HARDING 12/17/2019

Page 52

1 MR. DIMOND: Okay. I'll stand back
2 then.

3 BY MR. GRADELESS:

4 Q. How many Rotterdam, Netherlands projects
5 do you recall, Amy?

6 A. I've had --

7 MR. DIMOND: I'm going to object on
8 relevance and that it's not -- the question is
9 also not calculated to lead to the discovery of
10 admissible evidence.

11 BY MR. GRADELESS:

12 Q. Amy, you can respond.

13 A. I don't know. I don't have any of this
14 information with me.

15 Q. That's okay.

16 A. I have no idea how many projects they
17 have.

18 Q. That's all right. Do you work with Ed
19 Gotch?

20 A. Yes.

21 Q. How so?

22 A. From time to time. Not -- well, he's our
23 CEO and he's in the same office. I guess I
24 wouldn't say I work with him frequently. He's our

1 shareholders. But the primary purpose of it is
2 that it's required in our lender agreement.

3 **Q. How is it provided --**

4 A. Banks don't loan you that much money
5 without the audited financials.

6 **Q. I'm sorry, they don't what?**

7 A. Banks will not loan you that much money
8 without, you know, \$780,000,000, without asking
9 for audited financials.

10 **Q. Right. Okay. And you say you provide**
11 **that audit to your shareholders?**

12 A. Yes.

13 **Q. How do you provide that audit to your**
14 **shareholders?**

15 A. It's a report.

16 **Q. I mean, is it on a website? Is it**
17 **emailed?**

18 MR. DIMOND: Objection. Objection.
19 Foundation. And this is not relevant or
20 reasonably calculated to lead to the discovery of
21 admissible evidence.

22 BY MR. GRADELESS:

23 **Q. Amy, you can respond.**

24 A. It's emailed.

CHRISTOPHER WROBEL 12/17/2019

Page 2

1 I N D E X

2

3 WITNESS: CHRISTOPHER WROBEL

4

5 EXAMINATION BY:

PAGE:

6 MR. GRADELESS

4

7 MR. HARDING

8

9

10 E X H I B I T S

11

12 Exhibit No. 1

4

13 (Attached)

14

15

16 CERTIFICATE OF REPORTER

78

17

18

19

20

21

22

23

24

CHRISTOPHER WROBEL 12/17/2019

Page 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A P P E A R A N C E S

ICE MILLER, LLP
BY: MR. THOMAS DIMOND
200 West Madison
Suite 3500
Chicago, IL 60606
312-726-7125
Thomas.Dimond@icemiller.com
Appeared on behalf of Petitioner
Emerald Polymer Additives;

DIVISION OF LEGAL COUNSEL
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
BY: MR. REX GRADELESS
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62702
217-782-5544
Rex.Gradeless@Illinois.gov
Appeared on behalf of Respondent EPA.

ALSO PRESENT:
MIDWEST LITIGATION SERVICES
Kathy Johnson, Court Reporter
711 North 11th Street
St. Louis, Missouri 63101
314-644-2191,

CHRISTOPHER WROBEL 12/17/2019

Page 4

1 (Deposition start time: 1:31 p.m.)

2 (Witness sworn.)

3 CHRISTOPHER WROBEL,

4 being first duly sworn on oath, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. GRADELESS:

8 Q. This is the deposition of Chris Wrobel in
9 the matter of Petition of Emerald Polymer
10 Additives, LLC, for an adjusted standard before
11 the Illinois Pollution Control Board, case number
12 AS 19-002.

13 Chris, can you please state your full
14 name and spell it for us?

15 A. Yeah. My name is Christopher Wrobel.
16 C-h-r-i-s-t-o-p-h-e-r, W-r-o-b-e-l.

17 Q. Thank you, Chris. And where do you live,
18 Chris?

19 A. My physical -- where I reside in Portland
20 Oregon? 3963 North Colonial Avenue.

21 Q. Okay.

22 A. Sorry, Chris. Can you say the street
23 again?

24 A. Colonial Avenue.

1 Q. Thank you. And that -- we will have some
2 technical realities. If there's something you
3 don't hear, or sometimes we may have a little bit
4 of a phone lag, but just let me know, and we may
5 ask for clarification as well. So that's just one
6 of the things we have to face being so many miles
7 away.

8 A. Certainly.

9 Q. Now, Chris, have you ever had -- taken a
10 deposition before?

11 A. Yes.

12 Q. How many times?

13 A. Once prior to this.

14 Q. Okay. When was the last time you had a
15 deposition?

16 A. I believe it was the April -- spring --
17 definitely spring of 2019.

18 Q. Okay. And do you remember what was the
19 nature of that deposition or case?

20 A. It was a lawsuit and counter lawsuit
21 brought by Fire Mountains Farms against Emerald
22 Kalama Chemical.

23 Q. Okay. Is that ongoing litigation right
24 now?