

ILLINOIS POLLUTION CONTROL BOARD
January 6, 2020

IN THE MATTER OF:)
)
PETITION OF EMERALD POLYMER) AS 19-2
ADDITIVES, LLC, FOR AN ADJUSTED) (Adjusted Standard- Water)
STANDARD FROM 35 ILL. ADM. CODE)
304.122(b))

HEARING OFFICER ORDER

On December 20, 2019, petitioner filed a motion to exclude evidence and argument at hearing relating to the financial condition of petitioner or its corporate parent or affiliates. On the same day, the Illinois Environmental Protection Agency (Agency) filed a motion to compel petitioner's financial information, including that of Emerald Performance Materials, LLC (parent company). For the reasons set forth in this order, the Agency's motion to compel is granted, and petitioner's motion to exclude evidence at hearing is denied. This order also grants the Agency's motion to use evidence depositions at hearing.

The pre-hearing motions raise the issue of whether petitioner's ability to afford treatment options in order to comply with the standard is relevant to the Board's consideration of whether compliance is economically reasonable and technically feasible.

Petitioner seeks to renew its adjusted standard with no sunset provision. As part of this request, petitioner represents that it employs a team of qualified personnel to continually evaluate alternative treatment options to achieve the goal of further reducing ammonia in the effluent. To date, the team has not identified any options. In fact, petitioner's prehearing statement asserts that it has investigated and evaluated at least 16 treatment alternatives over more than 20 years without finding one that is both technically feasible and economically reasonable. The Agency disputes this assertion.

Granting an adjusted standard with no sunset provision may affect the Agency's ability to test or challenge the results of any of petitioner's future alternative treatment investigation. Furthermore, petitioner has not demonstrated that there would be an incentive for petitioner's team to continue to investigate or implement alternatives absent a sunset provision. Therefore, any potentially relevant information or treatment options should be addressed in this proceeding.

Petitioner argues that financial ability is not relevant because it creates an unlevel playing field, holding large corporations to higher standards than small operations. In this instance, petitioner is the only player on the field. Furthermore, petitioner has not demonstrated that the Board may not consider petitioner's financial information in an economic reasonableness review. At the very least, the Board may find the financial information to be relevant even if it is not determinative of economic reasonableness.

To that end, the Agency's motion to compel financial information is granted. According to the comptroller for the parent company, the financial information requested by the Agency could be easily provided. Therefore, the FY2015-2019 balance sheets, income statements, cash flow statements and annual audits must be served on the Agency by January 9, 2020. Petitioner's motion to treat this information as non-disclosable must be filed pre-hearing, and the Agency must treat the information as non-disclosable pending the Board's ruling.

Despite granting the Agency's motion to compel, testimony and admissibility of documents at hearing may be limited to evidence relevant to petitioner's access to funding from its parent company. Evidence relating to the other three entities under the parent company is not likely to be admitted unless the Agency can demonstrate its necessity. Evidence pertaining to petitioner's legal fees will not be admitted.

On December 31, 2019, the Agency filed a motion to use depositions for three out-of-state witnesses as evidence at hearing. On January 3, 2020, petitioner filed a response, arguing that it had not stipulated to using the depositions as evidence, and that the depositions were not relevant.

The Agency's motion is granted. The notices stated that the depositions were for the "purpose of discovery and/or for use in evidence." Also, counsel for the Agency memorialized a conversation indicating his understanding of an agreement on evidence depositions (Mot. Ex. A). Counsel for petitioner should have corrected him at that time if he objected.

The relevance of the evidence depositions may be limited as set forth above. Additionally, if petitioner moves to treat the financial information in the evidence depositions as non-disclosable, the public will be asked to leave the hearing room, and a separate transcript will be taken.

IT IS SO ORDERED.



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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on January 6, 2020, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on January 6, 2020:

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