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 RESPONSE OPPOSING PETITIONER'S MOTION TO EXCLUDE RELEVANT EVIDENCE, for the above-captioned proceeding, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: December 30, 2019

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

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

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ILLINOIS EPA'S RESPONSE OPPOSING PETITIONER'S MOTION TO EXCLUDE RELEVANT EVIDENCE

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, in response to Petitioner's Motion to the Hearing Officer to Exclude Evidence and Argument at Hearing, states as follows:

PROCEDUAL BACKGROUND

1. Petitioner has been consistently unresponsive during discovery; even objecting to supply the addresses of persons assisting with responses to interrogatories or its witnesses. *See e.g.* Illinois EPA's Motion to Compel Financial Information, December 20, 2019.

2. On December 20, 2019, while complete responses to Illinois EPA's discovery requests were still pending, and while knowing Illinois EPA intended to file a motion to compel complete responses, Petitioner filed a motion seeking to bar the Illinois EPA from "introducing any documents or other evidence regarding the profitability or financial condition of Emerald, or its corporate parents or other affiliates, and barring any argument at hearing based on such documents or other evidence." Petitioner Mot., December 20, 2019.

3. Presumably, Petitioner seeks to bar both the financial information disclosed during the depositions of Emerald Performance Materials employees, Edward Gotch and Amy Harding, and the financial information that has not even been produced to the Illinois EPA.

BACKGROUND

4. In 2013, Petitioner's parent company, Emerald Performance Materials, LLC ("Petitioner's Parent"), was the legal entity petitioning the Illinois Pollution Control Board ("Board") for this same adjusted standard. *See Petition of Emerald Performance Materials, LLC for adjusted standard from 35 Ill. Admin. Code 304.122,* AS 13-2.

5. Petitioner's Parent wholly owns Petitioner and pays all of Petitioner's bills. (Gotch Dep. p. 45-47)

6. Petitioner's Parent serves as a "pooled cash" hub for four subordinate entities known as 1) Kalama Chemical, LLC, 2) Emerald Specialty Polymers, LLC, 3) Emerald Performance Hong Kong Limited, and 4) the Petitioner. (Gotch Dep. p. 26, 45-48); (Harding Dep. p. 20-21)

7. In the past, Petitioner's Parent has used the revenues from one of its subordinate entities to finance a capital improvement project of on of its other subordinates. *Id*. at 48.

8. Petitioner's Parent pools the financial resources together from all four subordinates and cash flows from the Petitioner's Parent to the Petitioner when needed. (Gotch Dep. p. 45-47)

9. Petitioner's Parent pays to keep the lights on at the Henry, Illinois facility. (Harding Dep. p. 53-54)

10. At a minimum, Petitioner's Parent forecasts more than half a billion dollars in collective revenues for fiscal year 2019. (Gotch Dep. p. 26, 45-48)

11. Petitioner's Parent pays and employs the site director, Galen Hathcock ("Hathcock"), at the Henry, Illinois facility at issue in this case. Hathcock must request special permission from Petitioner's Parent to spend more than $25,000 at the Henry, Illinois facility. (Gotch Dep. p. 35)

12. Petitioner's Parent hired the expert in this case for $63,700, inclusive of $18,400 set aside for the deposition and hearing, for the purposes of responding to Illinois EPA's recommendation filed on July 19, 2019. Illinois EPA has no burden of proof in this case.

13. Based upon information and belief, Petitioner's Parent pays Petitioner's legal costs.

14. If required by the Board, Petitioner's Parent would pay for the technically feasible treatment(s) in this case. (Gotch Dep. p. 14-15)

15. As a board member of Petitioner's Parent, Edward Gotch, has the authority to, without obtaining board approval, approve any capital project up to $250,000, or up to $500,000 if it was already outlined in the annual operating budget and approved by Petitioner's Parent's board of directors. (Gotch Dep. p. 14-17) This is separate and apart from plant manager, Hathcock's authority noted in paragraph 10.

16. The largest capital improvement project approved by the Petitioner's Parent in recent history was for an approximate 36€ million (approximately $39,928,572.00) purification capacity project in Rotterdam, Netherlands. (Gotch Dep. p. 16-17)

17. Petitioner's Parent is owned by an investment firm, American Securities, that owns a portfolio of $10 to $14 billion in revenues. (Gotch Dep. p. 9-10)

18. Petitioner is one of the only, if the only, dischargers in the State of Illinois that has failed to improve the toxicity of its effluent above the single digit percentage LC_{5O} level. In the present day, LC_{5O} values this toxic are not found at any other Illinois facility. *Petition of Emerald Performance Materials, LLC for adjusted standard from 35 Ill. Admin. Code 304.122,* AS 13-2.

19. Even though Petitioner's Parent pays all the bills, Petitioner has never submitted a capital improvement proposal, aimed at fixing the ammonia issues at the Henry, Illinois plant, to Petitioner's Parent for consideration. (Gotch Dep. p. 40)

20. Mexichem, Inc (now owned by Orbia, Inc) feeds its wastestream through Petitioner's Henry, Illinois facility, adds ammonia to Petitioner's wastestream, and pays the Petitioner nearly $2 million a year to do so. (Harding Dep. p 57)

ARGUMENT

1. Petitioner's motion should be denied because Petitioner must prove to the Board that it is using the best degree of treatment consistent with technological feasibility, economic reasonableness, and sound engineering judgment. 35 Ill. Adm. Code 302.102(a); 304.102(a).

In this case, Petitioner's existing mixing zone is improper because Petitioner is not providing the best degree of treatment. Over the expansive history of this adjusted standard case, Petitioner has presented several alternatives that achieve 100% or less ammonia reductions. In other words, Petitioner can do better and the technical feasibility of reducing ammonia within Petitioner's effluent can hardly be disputed in 2019. Petitioner has the tools available to it to substantially lower (or eliminate) its ammonia nitrogen concentrations in its effluent but has overtly failed to do so. The Illinois EPA repeats: Petitioner will never act unless compelled by the Board to do something[1].

The only purpose of Petitioner's motion to exclude the relevant financial information is to hide the fact that the technologically feasible treatment(s) are also economically reasonable. There are technologically feasible ways to fix Petitioner's ammonia issues – just like numerous publicly operated treatment works ("POTWs") and other industries already have across Illinois. However, to avoid fixing the problem, Petitioner argues that the "one-sized-fits-all" end-of-pipe solutions it proposes are just not affordable, so case closed.

[1] This is not to suggest Petitioner has a nefarious intent. By it very existence as a corporate entity, the board of directors of Petitioner's Parent holds a fiduciary duty of loyalty and care to the corporation and must act only in the best interests of the corporation and its collective shareholders. Sometimes that calculus could mean incurring the expense of an adjusted standard case versus spending money to reduce ammonia discharges.

Specifically, for example, Petitioner asserts 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); that the economic cost (of river water dilution) is "prohibitive" (April 3, 2019 Pet., p. 24); and that 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 Parent further considers, *inter alia*, the economics and financial affordability when making decisions on capital improvement projects. (Gotch Dep. p. 32-36)

Because technical feasibility can hardly be disputed, Petitioner must prove to the Board that all possible technically feasible ways to reduce ammonia are also economically unreasonable. In other words, Petitioner must show the best degree of treatment alternatives, or any combinations thereof, are in no possible way economically reasonable to implement. Thus, Petitioner's motion to exclude relevant financial information should be denied.

2. Petitioner's motion should be denied because the Board's economic reasonableness analysis involves the financial resources available to Petitioner to provide the best degree of treatment.

"Economic reasonableness" is not defined in the Act or the Board's regulations. However, the Board has had occasion to apply an economic reasonableness standard in a variety of cases. Typically, the cases are interpreting, as in this case, whether the Board has determined that implementation of a particular control technology or compliance with a rule will be economically reasonable pursuant to the Board's mandate to take economic reasonableness "into account" under Section 27(a) of the Act. This case involves Section 302.102(a) and Section 304.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 302.102(a); 304.102(a).

The question is whether the Petitioner, not the Illinois EPA, has been reasonable (or not arbitrary) in determining that implementation of a technologically feasible alternative is economically unreasonable. Further, the question includes an analysis of whether Petitioner has provided the Board with enough information to determine whether all technically feasible alternatives (i.e. complete overhauls, partial improvements, or a combination of projects) are economically unreasonable with approperate consideration given to all possible funding avenues available to the Petitioner and a complete financial analysis of Petitioner's partial compliance.

A variety of cases that reflect the Board's analysis of economic reasonableness over many decades provides a roadmap for the economic reasonableness analysis of a control technology. The variety of cases dealing with an economic reasonableness standard include but may not be limited to: adjusted standards cases (e.g., *EPA v. Pollution Control Board*, 308 Ill. App. 3d 741 (2d Dist. 1999); rulemaking matters (e.g., *In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations (CCDD): Proposed Amendments to 35111. Adm. Code 1100*, R12-9, February 2, 2012); and site-specific rulemakings (e.g., *In the Matter of' Proposed Site-Specific Rule Change for Reilly Chemical Corporation, Granite City Facility: 35 I11. Adm. Code 307.1102*, R88-9, October 18, 1989; and, *Central Ill. Light Co. v. PCB*, 159 Ill. App. 3d 389 (3d Dist. 1987)).

While the Board has on occasion used a cost per pound yardstick[2] in certain cases involving air pollution, there are a number of other concerns that should factor into the cost. The Board has certainly not limited its analysis to arbitrarily assessing whether a certain cost per pound of

[2] *See EPA v. PCB*, 308 Ill. App. 3d 741, 746-747 (Court found that installation of a powder coating system would be economically reasonable. The Board, in the underlying case, used the average control cost per ton in the Reasonably Available Control Technology rules as a yardstick. Those rules, however, were based on an Illinois Institute of Natural Resources study that determined an average cost-- in 1980 dollars-of complying with [air] pollution regulations. The cost related to air pollution control for VOM, not water pollution control measures for ammonia.) *See also In the Matter of: Petition of Greif Packaging, LLXC, For An Adjusted Standard From 35 Ill. Adm. Code Part 218*, Subpart TT, AS 2011-01, (April 5, 2012).

pollution reduction is sufficient to establish whether implementation of a technology is economically reasonable.

First, the Second Appellate District of Illinois has articulated that the Board should be willing to look at any non-speculative, tangible benefits of installing the subject technology. *EPA v. PCB*, 308 Ill. App. 3d 741, 751 (2d Dist. 1999). Secondly, costs for compliance and the environmental harm addressed by the control technology should be viewed relative to other operating costs and other environmental problems addressed by existing operations. *Central Ill. Light Co. v. PCB*, 159 Ill. App. 3d 389 (3d Dist. 1987). The Board has also found affordability or economic impact an appropriate factor to consider in determining whether the implementation of a particular technology can be considered economically reasonable. *In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations (CCDD): Proposed Amendments to 35 Ill. Adm. Code 1100*, R12-9, February 2, 2012, affirmed in *County of Will v. Pollution Control Bd*., 2019 IL 122798 (Ill. Sup. Ct. 2019). Finally, whether alternative methods of partial compliance were adequately investigated may be a factor in the overall assessment of economic reasonableness. *See In The Matter Of' The Petition Of The City of Havana For A Site-Specific Rule-Making Rule Change To The Combined Sewer Overflow Regulations*, R88-25 (February 22, 1990).

A. Petitioner's motion should be denied so <u>non-speculative tangible benefits</u> can be evaluated with respect to economic reasonableness.

In *EPA v. PCB*, the Illinois EPA argued that the Board should "take into account benefits that will accrue to the petitioner as a result of implementing control technology." 308 Ill. App. 3d 741, 751. In that case, the "purported benefit" to the petitioner was the potential settlement of a pending enforcement action. The Second District noted that nothing in the record supported the "purported benefits...with any certainty." *Id*. at 752. However, the Court agreed that "the Board

should take into consideration tangible benefits that have been established with some certainty" and are not "purely speculative." *Id*. at 751.

Here, there are likely non-speculative tangible benefits attributable directly to Petitioner's Parent. First, given Petitioner's Parent pays Petitioner's bills, the non-speculative tangible benefit in this case would be the benefit of not paying for future expert witnesses, legal fees, or future enforcement actions associated with Petitioner's effluent. The Board can consider the offset of these non-speculative tangible benefits when evaluating economic reasonableness. Further, Petitioner's Parent may receive another tangible benefit if an ammonia-reducing project also reduces costs to the Henry, Illinois facility (e.g. a capital improvement project that also improves efficiency within the Petitioner's processes or assists in removing other pollutants within the plant). Additionally, the Board may consider Petitioner's or Petitioner's Parent's ability, or lack thereof, to secure an interest-free loan to finance capital improvements necessary to achieve compliance with the ammonia standard. The amount of resources available to Petitioner are staggering and these tangible non-speculative cost-saving measures should be evaluated, not be ignored, when considering the economic reasonableness of treatments.

Additionally, because Mexichem feeds its wastestream, through Petitioner's plant, and gives Petitioner's Parent nearly $2 million a year to do so, Petitioner's Parent has an obligation to also evaluate the tangible non-speculative economic benefits of sharing any capital improvement cost of each alternative, or partial alternative, with Mexichem. Over the last five years, Mexichem has paid Petitioner's Parent approximately $10 million to use Petitioner's wastestream to freely pollute vicariously through Petitioner's adjusted standard. Therefore, the Board should also consider whether it's appropriate for the Petitioner to be profiting from an adjusted standard. The financial information Petitioner seeks to bar is relevant evidence for the Board to consider and

Petitioner's motion to exclude should be denied.

B. Petitioner's motion should be denied so relative costs and harm can be evaluated with respect to economic reasonableness.

The Third Appellate District of Illinois has found that the Board did not err in finding that a light company failed to demonstrate that compliance was economically unreasonable where the company failed to demonstrate that the relative costs of implementing the controls were excessive in comparison to the relative environmental harm. *Central Ill. Light Co. v. PCB*, 159 Ill. App. 3d 389, 394-95 (3d Dist. 1987). Central Illinois Light Co. (CILCO) documented that a capital expenditure for a physiochemical treatment system to address TSS would be $4,610,000 with an operating and maintenance cost of $204,000 for the first year of operation. *Id*. They also claimed that this amount represented 17% of the entire 1985 operating and maintenance budget for the facility's pollution control programs. The Board agreed that the relation of the cost for operating the TSS controls to the entire budget was potentially a factor to consider. *Id*. And, the relative cost could only be demonstrated as unreasonable if the TSS effluent problem bore the same relation to other environmental problems addressed by the facility. As "[t]here was no evidence upon which the Board could determine that these costs were unreasonable, aside from the assertion ... that these costs are 'certainly not reasonable,' and CILCO failed to put the cost figures "into perspective," the Court held that the Board's decision was not arbitrary. *Id*.

Here, Petitioner has failed to put the costs of treatment alternatives, both proposed and not proposed by its expert, into perspective in this case. While it may appear that the cost per pound of reducing the ammonia in Petitioner's effluent is a larger number than those of other POTWs, those costs must be put into perspective. As the above case demonstrated, the cost of implementing and/or operating the control technology is of course relevant, but also relevant is the operating cost (or savings) for the technology in comparison or relation to total operating costs (or savings). These

operating costs will be borne by the budget of Petitioner's Parent, if not the shareholders at American Securities, and not the Petitioner. Petitioner's Parent forecasts over half a billion dollars in revenues for 2019 alone. (Gotch Dep. p. 26, 45-48)

Petitioner is one of the only, if the only, dischargers in the State of Illinois that has failed to improve the toxicity of its effluent above the single digit percentage LC_{5O} level. In the present day, LC_{5O} values this toxic are not found at any other Illinois facility. *Petition of Emerald Performance Materials, LLC for adjusted standard from 35 Ill. Admin. Code 304.122,* AS 13-2. Petitioner's efforts, or lack thereof, are not consistent with what others in Illinois have done to reduce ammonia discharges. The relative costs to Petitioner's Parent must be, but has not been, analyzed as comparative to whether Petitioner's ammonia problems bare the same relation to other environmental problems addressed by the Henry, Illinois facility or projects across the county. For example, Petitioner's Parent's recent 36€ million (approximately $39,928,572.00) investment in Rotterdam, Netherlands, balanced against technologically feasible alternatives existing to treat one of Illinois' most toxic effluents (where payments could be spread apart on a zero (or low) interest loan for 30 years) becomes relevant when considering the relative cost of treatment technologies and the environmental benefit associated with ammonia reductions (currently 46.6 times greater than the current State standard) to the people of Illinois. In other words, a capital improvement project in Henry, Illinois, that solves the ammonia discharge issues within Illinois' most toxic effluents, may be pennies on the dollar to Petitioner's financier – Petitioner's Parent. Therefore, the financial information Petitioner seeks to bar is relevant evidence for the Board to consider and Petitioner's motion to exclude should be denied.

C. Petitioner's motion should be denied so <u>affordability or economic impact</u> can be evaluated with respect to economic reasonableness.

Whether a company can afford to install a treatment system is likely not the sole inquiry.

However, affordability or economic impact can be a component in determining whether the given environmental benefit achieved by the system is to be reasonably implemented. For example, where groundwater monitoring was found to be not only costly, but costly enough that it "could potentially result in businesses closing," such monitoring was considered economically unreasonable. See *In the Matter of Proposed Amendments to Clean Construction or Demolition Debris Fill Operations (CCDD): Proposed Amendments to 35 Ill. Adm. Code 1100*, R12-9 (February 2, 2012).[3] Here, whether Petitioner, acting essentially as a shell legal entity, may go out of business may be a relevant consideration. However, counter to that consideration may also be the fact that Petitioner's Parent forecasts over half a billion in revenues for 2019 and can ensure that Petitioner remains in business. In the past, Petitioner's Parent has used the revenue from one of its subordinate entities to finance a capital improvement project of another one of its subordinates. (Gotch at 48.) Further, and if required by the Board, Petitioner's Parent would be paying for the technically feasible treatment(s) in this case. (Gotch Dep. p. 14-15) Thus, Petitioner's motion to exclude the financial information should be denied.

Additionally, Petitioner has never submitted information in accordance with US EPA's Interim Economic Guidance for Water Quality Standards (EPA-823-B-95-002) to address economic impacts of any treatment alternatives. The US EPA guidance document looks at the economic impact to the company and the community and is a more complete way of looking at cost. While the guidance is used in antidegradation analyses, the guidance itself notes its usefulness and relevance in other contexts besides antidegradation, as follows:

"While the terminology is different, the tests to determine substantial and widespread

[3] In cases involving municipalities, affordability is frequently taken into consideration in determining economic reasonableness. See *In the Matter of: Petition of the City of Tuscola to Amend Regulation Pertaining to Water Pollution*, R83-23, April 21, 1988 (economic impact relates to affordability of user charges); See also *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, July 3, 1990.

> economic impacts (used when removing or granting a variance) are basically the same as those used to determine if there might be interference with an important social and economic development (antidegradation). As such, antidegradation analysis is the mirror image of the analyses described in Chapters 2, 3 and 4 [which deal with substantial or widespread economic impacts]. Variances and downgrades refer to situations where additional treatment needed to meet standards may result in worsening economic conditions; while antidegradation refers to situations where lowering water quality may result in improved social and economic conditions." *Policy & Guidance: Interim Economic Guidance for Water Quality Standards- Chapter 5*, http://water.epa.gov/scitech/swguidance/standards/economics/chaptr5.cfm

Illinois EPA may use the US EPA guidance as a tool to determine the relative cost of the technology and determine whether implementation of the technology is economically reasonable.

With the little information that the Illinois EPA has been provided from Petitioner -- the cost of Petitioner's proposed one-size-fits-all treatment alternatives: ($22 million - ozonation), ($7.3 million - alkaline stripping), ($10 million - tertiary nitrification), ($4.1 million - breakpoint chlorination), ($6.0 million - ion exchange), ($6.0 million - land application) are analogous to the capital costs expended by POTWs in Illinois. For example: In January 1998, Geneva proposed to pay a capital cost $8.4 million to reduce 1,042 lbs/ day of ammonia in its effluent. In February 2002, Batavia proposed to pay a capital cost of $6 million to reduce 875.7 lbs/day of ammonia in its effluent. In April 2002, St. Charles proposed to pay a capital cost of $8.4 million to reduce 976 lbs/day from it effluent. In 2017, the Kishwaukee Water Reclamation District proposed a $53 million project to, *inter alia*, provide a new activated sludge process to meet ammonia limits that included a new separate treatment of WAS thickening filtrate and dewatering centrate (sidestream treatment) to reduce ammonia loads. In 2017, the Village of Newark proposed a $3 million project to provide ammonia removal. In 2018, the Fox River Reclamation District proposed $2 million project to build two 400,000-gallon capacity flow equalization tanks to control the amount of ammonia containing filtrate that was returned to the beginning of its secondary treatment process. In 2018, Mount Carmel proposed $1.6 million project to fund new fine bubble aeration equipment

to allow the city to achieve compliance with the ammonia limits.

These POTWs obtained 30-year loans from the Illinois EPA's State Revolving Loan Program to finance these projects. Petitioner provides no analysis on the viability of Petitioner's Parent to obtain a loan on its behalf. Petitioner's Parent's financial ability to obtain a loan to finance treatment(s) technology is therefore relevant when analyzing the economic reasonableness of the available treatment(s) technologies. Based upon information and belief, Petitioner's Parent has 1) the capital to fix the ammonia issue outright and/ or 2) has the economic viability to obtain a 30-year loan like these POTWs. The financial information Petitioner seeks to bar is relevant evidence for the Board to consider and Petitioner's motion should be denied.

D. Petitioner's motion should be denied so alternative methods of partial compliance can be evaluated with respect to economic reasonableness.

In looking at economic reasonableness, the Board "must be convinced that other alternative compliance plans have been evaluated" including "methods of full or partial compliance." *In The Matter Of: The Petition Of The City of Havana For A Site-Specific Rule Making Rule Change To The Combined Sewer Overflow Regulations*, R88-25 (February 22, 1990). None of Petitioner's alternatives consider partial compliance or an economic analysis of the same. Instead, one-sized-fits-all solutions are proposed at the end of the pipe.

For example, partial filtration, partial tertiary nitrification, partial breakpoint chlorination, partial or seasonal river water dilution, internal process improvements, partial or seasonal land application, and reductions in overall water use can all serve to reduce the ammonia in Petitioner's effluent. None of these partial or combined approaches have been evaluated by Petitioner with any depth or any serious consideration. Petitioner has not provided any objective data to demonstrate that it is not possible to reduce the ammonia within its discharge by doing partial alternatives or any combinations thereof or that there are any risks. Again, Petitioner's Parent's financial ability

to provide partial, or a combination thereof, methods to achieve compliance is relevant and should be provided to the Board. Petitioner's motion to exclude relevant financial information be denied.

CONCLUSION

If the Petitioner does not wish to submit relevant financial information to the Illinois EPA or to the Board, the adjusted standard should be denied now, without hearing. Moreover, and nonetheless, Petitioner will not be able to demonstrate the technically feasible treatments(s) alternatives are economically unreasonable where it has failed to: 1) take into account offsets in costs from the tangible non-speculative benefits of ammonia treatment(s); 2) take a reasoned look at the costs relative to other treatment(s) costs; 3) provide the Board with economic information to aid in the evaluation of costs and benefits, and 4) provide objective data to support or deny methods of partial compliance or a combination of alternatives. Because Petitioner's Parent holds the purse, the financial information of the Petitioner's Parent is relevant evidence for the Board to consider and Petitioner's motion to exclude should be denied.

WHEREFORE, Illinois EPA respectfully requests that the hearing officer DENY Petitioner's motion to Exclude Evidence and Argument at Hearing. In the event Petitioner's motion is granted, Illinois EPA moves the Board for an immediate denial of the adjusted standard because Petitioner will have *prima facie* failed to provide the Board necessary information to evaluate the economic reasonableness of treatment(s) alternatives.

Dated: December 30, 2019

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Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

BY: /s/Rex L. Gradeless
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THIS FILING IS SUBMITTED ELECTRONICALLY

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S RESPONSE OPPOSING PETITIONER'S MOTION TO EXCLUDE RELEVANT EVIDENCE** 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 RESPONSE OPPOSING PETITIONER'S MOTION TO EXCLUDE RELEVANT EVIDENCE** 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 30, 2019.

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

That the number of pages in the e-mail transmission is seventeen (17).

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

/s/Rex L. Gradeless
December 30, 2019