

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2015

IN THE MATTER OF:)
)
PETITION OF EMERALD PERFORMANCE) AS 13-2
MATERIALS LLC FOR AN ADJUSTED) (Adjusted Standard)
STANDARD FROM 35 ILL. ADM. CODE)
304.122(b))

DISSENTING OPINION (by D. Glosser):

I respectfully dissent from the majority opinion in this case. I concur with the Illinois Environmental Protection Agency's (IEPA) January 14, 2013 recommendation to deny Emerald Performance Materials LLC's (Emerald) request for an extension of an adjusted standard from the 3.0 mg/L ammonia nitrogen effluent standard. I agree with the IEPA that Emerald has not met its burden to justify the granting of an adjusted standard, and I would therefore deny the requested relief.

In 2004, the Board granted Emerald an adjusted standard to allow for an ammonia nitrogen effluent standard of 155 mg/L. Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122, AS 02-5, slip op. at 21-22 (Nov. 4, 2004). In granting the adjusted standard, the Board imposed a number of conditions. *Id.* Those conditions included: 1) a sunset provision that the adjusted standard will expire on November 4, 2011; 2) the use of a high-rate, multi-port diffuser, 3) quarterly monitoring; 4) investigation of production methods and treatment technologies; and 5) compliance with a permit. The opinion also stated that, "[t]hroughout the duration of this adjusted standard, the Board encourages Noveon to research and propose means, beyond the wastewater treatment plant and multi-port diffuser, of providing environmentally beneficial improvements to the Illinois River in Marshall County." Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122, AS02-5, slip op. at 19 (Nov. 4, 2004).

Section 104.406(e) of the Board's rules requires the Petitioner to describe the compliance alternatives available to the Petitioner that reduce the discharge of ammonia nitrogen to 3 mg/L. 35 Ill. Adm. Code 104.406(e). This discussion must include the cost of each alternative, the overall capital costs, and the annualized capital operating costs. While Emerald provides a description of various possible technologies available for reducing ammonia, Emerald does not adequately address the costs associated to clearly illustrate why they were not economically viable. Further, Emerald did not evaluate a technology IEPA said was available – the use of granular activated carbon followed by biological treatment. Emerald also failed to update some of their material from that which was submitted in 2002, including the cost figures. Also, the cost estimates provided have an accuracy level of $\pm 50\%$, suggesting the estimates provided could be as much as 50% less than shown. Based on this, I cannot determine that these alternatives are not economically viable in today's economy.

I am also compelled by IEPA's point that because Emerald does not provide information on the recovery process, and what it considers to be "cost prohibitive", IEPA is not in a position to analyze Emerald's ability to have in-process reductions. Likewise, IEPA argues that "Emerald should still provide incremental reductions in ammonia even though it would fail to meet the prescribed 3 mg/L limit in section 304.122". I agree and believe that Emerald has taken no action in 13 years to reduce the ammonia in their effluent discharge, even to the point of failing to fully consider the technologies available to them and the costs associated with each.

In examining the table on pages 43 and 44 of the majority opinion and from the discussion in IEPA's filings, I find several of the available technologies to be viable alternatives, specifically effluent ion exchange and the ozonation option. I also agree with IEPA's point that, Emerald failed to present evidence that the cost of treating its effluent for ammonia nitrogen is higher than the costs expended by POTWs or other industrial plants, or higher than the costs contemplated by the Board when adopting Section 304.122.

I find convincing IEPA's statement that: "Emerald also claims that the ammonia nitrogen effluent limitation of 3 mg/L has little to no measurable impact to the Illinois River. Pet. 34. Emerald is the only discharger in the state that has failed to improve the toxicity of its effluent above the single digit percentage LC₅₀ Level. In the present day, LC₅₀ values this toxic are not found at any other Illinois facility." I believe that Emerald's failure to take any steps to reduce ammonia nitrogen in their effluent discharge is not in keeping with what other industries are doing.

In response to a question from the Board as to whether Emerald had considered any projects that would benefit the Illinois River, Emerald, in part, responded that it "has not had available capital to spend on additional projects that do not allow some return on investment or at least offset some operating expenses." I find this answer to be troubling. What business would prefer NOT to invest in pollution control equipment or a project to benefit the environment? These never result in a return on your investment, unless you consider the ability to continue operating an economic benefit.

While the majority concludes that the requested relief will not result in environmental or human health effects substantially or significantly more adverse than those considered by the Board in adopting the generally applicable effluent standard, I find there is no science included in the filings to support this statement.

For all these reasons, I respectfully dissent from the majority opinion.



Deanna Glosser, PhD

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on April 16, 2015.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Clerk
Illinois Pollution Control Board