

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 Compel**, copies of which are attached herewith and served upon you.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: December 30, 2019

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

evidence. *See* Exhibits A and B (Emerald's responses to the Agency's September 6 discovery), attached. While Emerald did not produce documents related to its counsel's time records and fees, it did produce balance sheets and income statements for 2015 through August 31, 2019 over its objections labeling those documents Public Record Claimed Exempt/NON-DISCLOSABLE INFORMATION. Those documents were also clearly labeled as being those of Emerald Polymer Additives. Emerald is dumbfounded by the Agency's assertion that these documents were not provided in good faith. The documents precisely responded to the Agency's request for "Petitioner's" financial information. They were not misleading in any way, shape or form.

3. If the Agency believed those documents were an inadequate response or if it wanted other documents, it should have taken action shortly after receiving the responses in October. The Agency's claim that it did not understand the relationship between Emerald and its parent, Emerald Performance Materials, LLC ("EPM"), is belied by the extensive research the Agency did before filing its Recommendation. *See* Recommendation, 4 and Exhibit 1 (portions of EPM's website). The Agency clearly understood that Emerald was a subset of EPM and that EPM had other operations. *Id.*, Exhibit 1 (referring to six operations around the world, including plants in Rotterdam, The Netherlands, and Widnes, United Kingdom). The Agency's reference to EPM's consolidated cash management is also irrelevant because each EPM subsidiary has its cash accounted for and because consolidated cash management is a routine approach for many modern corporations. Bragg, Steven M., *Corporate Cash Management, A Treasurer's Guide*, Accounting Tools, Inc., 2017.

4. Having no basis to assert non-compliance with an actual discovery request, on December 19, the Agency served a subpoena duces tecum on EPM seeking its financial

information similar to that requested from Emerald. *See* Motion, Ex. D.¹ That request is untimely because it was served the day before the Hearing Officer ordered all discovery *to be completed* on December 20. *See* Hearing Officer Order (August 29, 2019). The Agency's subpoena demands compliance on January 3, 2020, which is after the deadline, and it could not have demanded compliance before December 20. *See* 35 Ill. Adm. Code 101.622(b). The Motion should be denied because it is based on an untimely request.

The Discovery Sought Is Not Relevant or Likely to Lead to Relevant Evidence.

5. The Motion should also be denied because it does not seek information that is relevant or reasonably calculated to lead to the discovery of admissible evidence. In this regard, the Agency's Motion is long on generalities but short on specifics. Reciting general statements about the breadth of permissible discovery and a party's duty to comply, *see* Motion, ¶¶ 1-4, does not show that the specific information requested in the September 6 requests or the subpoena duces tecum is relevant or likely to lead to the discovery of relevant evidence.

6. Emerald objected to the September 6 discovery and the subpoena duces tecum because they sought irrelevant information. *See* Exhibit A, Responses to Nos. 4, 20 and 21 and Exhibit B, Responses to Interrogatories 3, 4, 10 and 11; *see* Motion, Ex. E (Letter dated December 20 to Agency counsel). The financial information sought is neither relevant nor reasonably calculated to lead to relevant information for the reasons set forth in Emerald's Motion to the Hearing Officer to Exclude Evidence and Argument at Hearing ("Emerald's Motion"), which we incorporate in full and only summarize here.

7. For an adjusted standard, the Board is to consider the economic reasonableness of measuring or reducing the particular type of pollution. Emerald's Motion, ¶ 3. This test

¹ As the subpoena was directed to a non-resident of Illinois and requested documents not related to operations in Illinois, it is doubtful that it is even valid. *See* 735 ILCS 5/2-209(b).

involves a cost-benefit analysis comparing the costs of implementing controls against the public benefits to be derived from those controls. *Id.*, ¶ 4 (citing *E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741, 751 (2d Dist. 1999) and *In the Matter of: Petition of Ford Motor Company (Chicago Assembly Plant) for an Adjusted Standard from 35 Ill. Adm. Code 218.986*, AS 00-6, 5 (Apr. 6, 2000)). *In the Matter of: Proposed Amendments to 35 Ill. Adm. Code 215: Flexographic and Rotogravure Printing*, R85-21, Final Order, 11-13 (Oct. 29, 1987) is particularly instructive. In that matter, a company's claim that pollution controls were economically unreasonable only considered the estimated costs of the controls to that company and the estimated benefits in terms of pollution reduction. Emerald's Motion, ¶ 5. That single company's general financial condition, profitability or ability to afford the proposed controls never entered into the Board's consideration. *Id.*

8. The test for economic reasonableness is not related to a single company's profitability or financial condition or ability to afford controls. If that were the test, then financially successful companies would be required to implement stricter, more costly controls than unsuccessful companies. That would create an unlevel playing field and encourage companies to operate at marginal viability, which is unwise policy. *Id.*, ¶ 6.

9. The Agency's Motion cites no cases rebutting Emerald's case law and analysis.

10. Equally unavailing is the Agency's weak effort to assert that Emerald has injected the issue of its financial condition into this matter. Motion, ¶ 5. Emerald did say it could not evaluate the economic reasonableness and technical feasibility of process improvement, Petition, 6-7, but that is because no specific improvement had been identified to evaluate. It does not mean that Emerald's financial condition is relevant. Elsewhere, Emerald evaluated economic reasonableness in detail without considering its financial condition. Petition, 22-27. As Emerald

has explained, the statement in its Petition that “the economic cost is prohibitive” for the river water dilution alternative was merely a phrase chosen by its counsel to mean that the alternative did not meet the test for economic reasonableness, as described above. *See* Exhibit B, Response to Interrogatory 8. The Agency also cites a phrase from page 31 of Emerald’s Petition out of context. Motion, ¶ 5. In full, Emerald said “Given the lack of any discernible environmental benefit, the technical infeasibility of many alternatives and the high cost of the technically feasible control technologies, the requested adjusted standard relief is warranted for Emerald.” Petition, 31. That statement is entirely in line with the weighing of costs and benefits of control alternatives as required by long-established case law. *See* ¶ 7, above.

11. A company’s profitability or the total amount of its assets is not relevant to showing that a control technology is, or is not, economically reasonable. A request for an adjusted standard does not invoke the “arbitrary and unreasonable hardship” test applicable in variance proceedings. 415 ILCS 5/35(a). Emerald has not claimed hardship because it has not requested a variance.

12. Further, the Agency has no apparent plan as to how it would introduce evidence as to the meaning of Emerald’s or EPM’s financial information to the economic reasonableness test. The Agency has disclosed no financial expert who has analyzed the information and an opinion as to the meaning of the information. Simply tossing financial information into the record and then hoping the Board or its technical staff will sort through it is improper. *See* Emerald’s Motion, ¶ 12.

WHEREFORE, Emerald requests that Illinois EPA's Motion to Compel be denied.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: December 30, 2019

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 December 30, 2019, I have served the attached **Notice of Electronic Filing and Emerald's Response to Illinois EPA's Motion to Compel** upon the following persons by electronic mail:

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
Rex.Gradeless@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

EXHIBIT A

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))	

PETITIONER EMERALD POLYMER ADDITIVES, LLC'S RESPONSES TO ILLINOIS EPA'S FIRST REQUEST FOR PETITIONER TO PRODUCE DOCUMENTS

Petitioner Emerald Polymer Additives, LLC ("Emerald"), by and through its attorneys Ice Miller LLP, hereby submits its responses to Illinois Environmental Protection Agency's ("IEPA") First Request for the Petitioner to Produce Documents, and states as follows:

PRELIMINARY STATEMENT

Emerald has not completed its investigation or its preparation for hearing. Accordingly, all objections below are based only upon such information that is presently available and specifically known to Emerald. Emerald reserves the right to assert new or alternative objections or grounds for objections to any particular Request for Production. Emerald's investigation of the issues related to this matter is ongoing, and thus Emerald reserves the right to supplement its responses as additional, non-privileged and responsive information becomes available. To the extent that Emerald responds to a Request for Production, Emerald is not waiving any objections or acknowledging or admitting that the Request is proper or within the bounds of discovery. All responses are made subject to, and without waiver of, all general and specific objections set forth below.

GENERAL OBJECTIONS

1. Emerald objects to each of IEPA's Requests for Production to the extent they call for answers protected by the attorney-client privilege, work product doctrine or any other

privilege. Disclosure of any information protected from disclosure by any such privilege shall be deemed inadvertent and shall not constitute a waiver of privilege.

2. Emerald objects to IEPA's Requests for Production to the extent they seek to impose burdens or obligations beyond those required by the Pollution Control Board Procedural Rules, including any portions of the Illinois Administrative Code and Illinois Supreme Court Rules that are incorporated into the Board's Procedural Rules.

3. Emerald objects to IEPA's Requests for Production to the extent they seek information that is within IEPA's control or in the control of someone other than Emerald.

4. Emerald reserves the right to assert additional objections to IEPA's Requests for Production, as appropriate, as responsive information is located and identified.

5. The foregoing General Objections are incorporated in each of the responses set forth below, as if fully set forth therein.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 1 on the grounds that the terms "statements" and "occurrences" are undefined, vague in context and subject to multiple interpretations. Emerald further objects to the extent this Request seeks documents or information protected by the attorney-client privilege or attorney work product. Subject to the foregoing general and specific objections, Emerald states that it does not possess any "statements" of persons "having knowledge of any and all occurrences within" the April 3, 2019 petition for adjusted standard, as Emerald understands these terms to mean.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome to the extent that the documents sought are publicly available through the Illinois Pollution Control Board's COOL system. Emerald further objects that the term "occurrences" is undefined, vague in context and subject to multiple interpretations. Finally, Emerald objects to this Request to the extent it seeks documents or information protected by the attorney-client privilege or attorney work product. Subject to the foregoing general and specific objections, Emerald refers to its Answer to IEPA's Interrogatory No. 2 and agrees to produce the following documents Bates-labeled EP000001-EP003466.

REQUEST NO. 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: Emerald objects that the term "occurrences" is vague in context. Subject to and without waiving its general or specific objections, Emerald refers to its Petition for Adjusted Standard, including the exhibits filed in support thereof, and the documents Bates-labeled EP000001-EP003466.

REQUEST NO. 4. All of Petitioner's financial balance sheets, and any annual shareholder reports, for fiscal years 2015, 2016, 2017, 2018, and 2019.

RESPONSE: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 4 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence because Emerald's balance sheets and shareholder reports are unrelated to the standard for "economic reasonableness" set

forth in 415 ILCS 5/27(a) and incorporated into 415 ILCS 5/28.1(a). Under this standard, “economic reasonableness” is determined relative to “measuring or reducing the particular type of pollution” and not a particular entity’s financial condition or ability to pay. *See* 415 ILCS 5/27(a). *See also E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741, 751 (2nd Dist. 1999) (economic reasonableness is a cost-benefit analysis that measures the cost of implementing pollution controls against the public benefits to be derived from the controls). Emerald further objects that Request No. 4 is overbroad and unduly burdensome to the extent it seeks “all” of certain categories of documents. Subject to the foregoing general and specific objections, Emerald agrees to produce balance sheets under separate cover and states that it does not create or possess any annual shareholder reports for the fiscal years 2015-2019.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 5 on the grounds that it is overly broad and unduly burdensome because the Illinois Pollution Control Board has already granted Emerald’s Motion to Incorporate the Record of AS 02-5 and AS 13-2, incorporating all documents and materials filed in these proceedings. Subject to the foregoing general and specific objections, Emerald states that the incorporated documents include, without limitation, those documents Bates-labeled EP000001-EP002466.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 6 on the grounds that it is overly broad, unduly burdensome and

duplicative of IEPA's other Requests because Request No. 6 does not specify the categories of information or what kind of information is sought by IEPA. Emerald further objects to the extent this Request seeks documents or information protected by the attorney-client privilege or attorney work product. Finally, Emerald objects that it has not yet determined each and every document on which it will rely in support of its Petition for Adjusted Standard. Subject to the foregoing general and specific objections, Emerald refers to its Petition for Adjusted Standard, including the exhibits filed in support thereof, and the documents Bates-labeled EP000001-EP003466. Emerald further states that it has not yet determined all facts that it will rely upon in support of its Petition for Adjusted Standard. Emerald refers IEPA to the general facts discussed in its Petition for Adjusted Standard and states that further facts will be developed through discovery and presented by Emerald at hearing.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to this Request on the grounds that it is overly broad, unduly burdensome and duplicative of IEPA's other Requests because it does not specify the categories of information or what kind of information is sought by IEPA. Emerald further objects to the extent this Request seeks documents or information protected by the attorney-client privilege or attorney work product. Subject to the foregoing general and specific objections, Emerald refers to its Petition for Adjusted Standard and the exhibits filed in support thereof and the documents Bates-labeled EP000001-EP003466.

REQUEST NO. 8. All documents relating to any investigation or examination of matters in the petition for adjusted standard.

RESPONSE: Emerald refers to its Response to Request No. 7 and incorporates the same as if fully stated herein. Emerald further states that it has retained expert Houston Flippin of Brown & Caldwell (“Mr. Flippin”) to investigate and examine matters discussed in Emerald’s Petition for Adjusted Standard. Mr. Flippin’s expert report will be provided to IEPA on the date that it becomes due. Emerald further refers to the documents Bates-labeled EP000001-EP003466.

REQUEST NO. 9. All income tax records of Petitioner for the past six (6) years preceding the date of this request.

RESPONSE: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 9 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence because Emerald’s income tax records are unrelated to the standard for “economic reasonableness” set forth in 415 ILCS 5/27(a) and incorporated into 415 ILCS 5/28.1(a). *See* 415 ILCS 5/27(a). *See also E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d at 751 (same as above). Subject to the foregoing general and specific objections, Emerald states that it does not separately file income tax returns and therefore does not possess any documents responsive to Request No. 9.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 10 on the grounds that it is overly broad and unduly burdensome because Mr. Flippin’s expert report will indicate the “test reports, authorities, books, articles, or other documents” relied upon. Subject to the foregoing general and specific objections, Emerald states that Mr. Flippin’s expert report will be provided to IEPA on the date that it becomes due and, additionally, agrees to produce the following documents Bates-labeled EP002467-EP003466,

and also refers to expert testimony and reports included in the documents Bates-labeled EP000001-EP002466.

REQUEST NO. 11. All notes, diaries, or other documents prepared by anyone pertaining to the petition for adjusted standard.

RESPONSE: Subject to and without waiving its general objections, Emerald refers to its Responses to Request No. 7 and 8, and incorporates the same as if fully stated herein.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald refers to its Responses to Request No. 7, 8 and 11, and incorporates the same as if fully stated herein.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 13 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to this proceeding. Subject to the foregoing general and specific objections, Emerald states that it is not aware of any responsive documents other than those incorporated from AS 02-5 and AS 13-2.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald states that it has not made a final determination regarding the documents it intends to introduce at hearing or use in depositions. Emerald will produce the exhibits to be used at hearing at a mutually-

agreed upon date when IEPA produces the same. Finally, Emerald refers to documents Bates-labeled 1-12709 produced by IEPA in this proceeding and documents Bates-labeled EP000001-EP003466.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 15 on the grounds that it is overly broad and unduly burdensome to the extent it seeks publicly-available documents and information relied upon by Mr. Flippin in drafting his expert report. Subject to the foregoing general and specific objections, Emerald states that Mr. Flippin's expert report will be provided to IEPA on the date that it becomes due. Additionally, Emerald refers to its Petition for Adjusted Standard, including the exhibits filed in support thereof, and documents Bates-labeled EP000001-EP003466.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 16 on the grounds that it is overly broad, unduly burdensome and duplicative of IEPA's other Requests because it does not specify the categories of information or what kind of information is sought by IEPA. Subject to the foregoing general and specific objections, Emerald states that it does not possess any additional documents responsive to this Request that have not already been produced.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 17 to the extent it seeks documents or information protected by the attorney-client privilege or attorney work product. Subject to the foregoing general and specific objections, Emerald agrees to produce the following documents Bates-labeled EP002467-EP003466.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 18 on the grounds that it is overly broad and unduly burdensome to the extent it seeks documents or information protected by the attorney-client privilege or confidential settlement communications. Subject to the foregoing general and specific objections, Emerald states that it has previously served IEPA with all pleadings, subpoenas and discovery requests related to this proceeding. Emerald further states that it has not issued any Freedom of Information Act requests, or any correspondence or written communications other than those previously sent to IEPA, and therefore does not possess any documents responsive to Request No. 18.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald refers to its Response to Request No. 18.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 20 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to this proceeding. *See* discussion of 415 ILCS 5/27(a) and *E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741, 751 (2nd Dist. 1999) in the objection to Request No. 4 above.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald refers to its Response to Request No. 20 and incorporates the same as if fully stated herein.

REQUEST NO. 22. True and accurate copies of all contracts that Petitioner has with any attorney representing it in this case.

RESPONSE: Subject to and without waiving its general objections, Emerald refers to its Responses to Requests No. 20 and 21, and incorporates the same as if fully stated herein.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald agrees to produce the following documents Bates-labeled EP000001-EP003466 and refers to the Bates-ranges specified in its Answers to IEPA's First Interrogatories Directed to Petitioner.

REQUEST NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Request No. 24 on the grounds that it is unduly burdensome and

unnecessary because the only documents that Emerald has withheld on the basis of privilege are communications and documents between Emerald and its attorneys, Ice Miller.

Respectfully submitted,

Emerald Polymer Additives, LLC

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

Date: October 4, 2019

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 4, 2019, I served the attached *Petitioner Emerald Polymer Additives, LLC's Responses to Illinois EPA's First Request for Petitioner to Produce Documents* upon the following persons by electronic mail and overnight delivery:

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
Rex.Gradeless@Illinois.gov

/s/ Thomas W. Dimond

EXHIBIT B

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))

**PETITIONER EMERALD POLYMER ADDITIVES, LLC'S ANSWERS
TO ILLINOIS EPA'S FIRST INTERROGATORIES DIRECTED TO PETITIONER**

Petitioner Emerald Polymer Additives, LLC ("Emerald"), by and through its attorneys Ice Miller LLP, hereby submits its answers to Illinois Environmental Protection Agency's ("IEPA") First Interrogatories Directed to Petitioner, and states as follows:

PRELIMINARY STATEMENT

Emerald has not completed its investigation or its preparation for hearing. Accordingly, all objections below are based only upon such information that is presently available and specifically known to Emerald. Emerald reserves the right to assert new or alternative objections or grounds for objections to any particular Interrogatory. Emerald's investigation of the issues related to this matter is ongoing, and thus Emerald reserves the right to supplement its answers as additional, non-privileged and responsive information becomes available. To the extent that Emerald answers an Interrogatory, Emerald is not waiving any objections or acknowledging or admitting that the Interrogatory is proper or within the bounds of discovery. All answers are made subject to, and without waiver of, all general and specific objections set forth below.

GENERAL OBJECTIONS

1. Emerald objects to each of IEPA's Interrogatories to the extent they call for answers protected by the attorney-client privilege, work product doctrine or any other privilege. Disclosure of any information protected from disclosure by any such privilege shall be deemed inadvertent and shall not constitute a waiver of privilege.

2. Emerald objects to IEPA's Interrogatories to the extent they seek to impose burdens or obligations beyond those required by the Pollution Control Board Procedural Rules, including any portions of the Illinois Administrative Code and Illinois Supreme Court Rules that are incorporated into the Board's Procedural Rules.

3. Emerald objects to IEPA's Interrogatories to the extent they seek information that is within IEPA's control or in the control of someone other than Emerald.

4. Emerald reserves the right to assert additional objections to IEPA's Interrogatories, as appropriate, as responsive information is located and identified.

5. The foregoing General Objections are incorporated in each of the answers set forth below, as if fully set forth therein.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Interrogatory No. 1 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks the "addresses, the dates of birth, and driver's license numbers" of Emerald employees that may be contacted through Counsel. Subject to the foregoing general and specific objections, Emerald states that the following individuals assisted in responding to these Interrogatories: (1) Galen Hathcock, Site Director, Henry, IL, contact through counsel Ice Miller LLP; (2) Amy Harding, Corporate Controller, contact through counsel Ice Miller LLP; and (3) counsel for Emerald, Ice Miller LLP.

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Interrogatory No. 2 on the grounds that the terms “authentic” and “credible” are undefined, vague in context and subject to multiple interpretations. Further, Emerald objects that whether a fact is “relevant” is a determination for the finder of fact. Additionally, Emerald objects to Interrogatory No. 2 as unduly burdensome to the extent it seeks documents and information that is within the possession of IEPA, publicly available through the Illinois Pollution Control Board’s COOL system and/or has already been incorporated into this proceeding pursuant to the Illinois Pollution Control Board’s Order of May 30, 2019. Subject to the foregoing general and specific objections, Emerald states that its Motion to Incorporate the Record of AS 02-5 and AS 13-2, which was granted by the Illinois Pollution Control Board on May 30, 2019, includes but is not limited to the following: EP000001-EP002466.

INTERROGATORY NO. 3. Provide Petitioner’s assets, liabilities, and expenses, including operation and maintenance costs, for fiscal years 2015, 2016, 2017, 2018 and 2019.

RESPONSE: Subject to and without waiving its general objections, Emerald specifically objects to Interrogatory No. 3 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence because Emerald’s assets, liabilities and expenses are unrelated to the standard for “economic reasonableness” set forth in 415 ILCS 5/27(a) and incorporated into 415 ILCS 5/28.1(a). Under this standard, “economic reasonableness” is determined relative to “measuring or reducing the particular type of pollution” and not a particular entity’s financial condition or ability to pay. *See* 415 ILCS 5/27(a). *See also E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741, 751 (2nd Dist. 1999) (economic reasonableness is a cost-benefit analysis that measures the cost of implementing pollution controls against the public benefits to be derived from the controls). Subject to the foregoing

general and specific objections, Emerald agrees to produce balance sheets indicating its assets and liabilities, and statements of its operating costs and expenses, under separate cover.

INTERROGATORY NO. 4. Provide Petitioner's projected annual operation and maintenance costs for fiscal years 2020, 2021, 2022, 2023, and 2024.

RESPONSE: Subject to and without waiving its general objections, Emerald specifically objects to Interrogatory No. 3 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence because Emerald's projected annual operation and maintenance costs are unrelated to the standard for "economic reasonableness" set forth in 415 ILCS 5/27(a) and incorporated into 415 ILCS 5/28.1(a). Under this standard, "economic reasonableness" is determined relative to "measuring or reducing the particular type of pollution" and not a particular entity's financial condition or ability to pay. *See* 415 ILCS 5/27(a). *See also E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d at 751 (same as above). Subject to the foregoing general and specific objections, Emerald agrees to produce budgeted operation and maintenance costs to the extent such budgets exist for 2020 through 2024 under separate cover.

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Interrogatory No. 5 on the grounds that it is seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks the "addresses, the dates of birth, and driver's license numbers" of individuals that may be contacted through Counsel. Subject to the foregoing general and specific objections, Emerald states that the following employees of Emerald currently serve on the described team and may be contacted

through Emerald's counsel, Ice Miller LLP: (1) Galen Hathcock; (2) Mark Winters; and (3) Chris Wrobel. In addition, Emerald states that Lance Richards formerly served on the team.

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald's retained expert, Houston Flippin of Brown & Caldwell ("Mr. Flippin"), will testify as to the information requested in Interrogatory No. 6. Mr. Flippin's expert report will be provided to IEPA on the date that it becomes due. Emerald further refers to its Petition for Adjusted Standard and exhibits filed in support thereof, including Mr. Flippin's Technical Memorandum dated April 13, 2018, which is attached to the Petition as Exhibit 6.

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald refers to its Answer to Interrogatory No. 6 and incorporates the same as if fully stated herein.

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald states that the phrase "economic cost is prohibitive," as used on page 24 of the Petition for Adjusted Standard, was a phrase chosen by its counsel as another way to refer to the economic reasonableness standard of 415 ILCS 5/27(a) and that Emerald has not determined a highest dollar figure that would not be cost prohibitive.

INTERROGATORY NO. 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: Emerald specifically objects to Interrogatory No. 9 on the grounds that it is overly broad and unduly burdensome because the Board's Procedural Rules and the Illinois Supreme Court Rules do not require Emerald to list every single fact in support of its Petition for Adjusted Standard prior to hearing. Further, Emerald has not yet made a final determination regarding the testimony and documents it intends to introduce at hearing and will produce its hearing exhibits at a mutually-agreed upon date when IEPA produces the same. Subject to and without waiving its general or specific objections, Emerald refers to its Petition for Adjusted Standard, and exhibits in support thereof, Emerald's document production Bates-labeled EP000001-EP003466 and documents produced by IEPA Bates-labeled 1-12709.

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald specifically objects to Interrogatory No. 10 on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence because Emerald's attorney's fees, are irrelevant and not reasonably calculated to lead to admissible evidence concerning any alternative pollution control technology that is the subject of Emerald's Petition for Adjusted Standard, or the Illinois standards for granting Emerald's requested relief. *See* 415 ILCS 5/28.1(a). *See also E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d at 751 (same as above).

INTERROGATORY NO. 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: Subject to and without waiving its general objections, Emerald refers to its Answer to Interrogatory No. 10 and incorporates the same as if fully stated herein.

200 West Madison, Suite 3500
Chicago, Illinois 60606
(312) 726-1567

CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 4, 2019, I have served the attached *Petitioner Emerald Polymer Additives, LLC's Answers to Illinois EPA's First Interrogatories Directed to Petitioner* upon the following persons by electronic mail and overnight delivery:

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
Rex.Gradeless@Illinois.gov

/s/ Thomas W. Dimond