

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 Motion to Treat Certain Information as Non-Discloseable**, copies of which are attached herewith and served upon you.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: January 8, 2020

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

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EMERALD'S MOTION TO TREAT CERTAIN INFORMATION AS NON-DISCLOSABLE

Emerald Polymer Additives, LLC ("Emerald") hereby moves to treat certain information as non-disclosable pursuant to 35 Ill. Adm. Code Part 130 and in accordance with the Hearing Officer's Order dated January 6, 2019. In support thereof, Emerald states as follows:

1. During the course of discovery in this matter, the Illinois Environmental Protection Agency has requested certain financial information related to Emerald and its corporate affiliates. Over objections that the requested information is not relevant to any issue in this proceeding, Emerald produced the following documents: (a) balance sheets for Emerald for the years ended December 31, 2015 through 2018 and the 8 months ended August 31, 2019 (EP003467); (b) statements of operations for Emerald for the same time periods (EP003468); (c) Combined Financial Statements and Report of Independent Certified Public Accountants, Emerald Performance Materials Group of Companies and Affiliates for the years ended December 31, 2015 through 2018 (EP003552 to EP003666); and (d) combined statements of operations, combined balance sheets and combined statements of cash flows for Emerald Performance Materials Group of Companies for the third quarter and year-to-date of 2019 (EP003667 to EP003669). Prior to being provided to the Agency, each document was labeled **Public Record Claimed Exempt/NON-DISCLOSABLE INFORMATION** in accordance with 2 Ill. Adm. Code 1828.202(a)(1)F) and 35 Ill. Adm. Code 130.404(b).

2. The Agency also conducted two depositions that focused on asking the witnesses questions about some of the documents described above or other information about financial approval processes and thresholds that is internal to Emerald and its corporate affiliates. Those are the depositions of Edward Gotch, a member of the board of directors of Emerald's corporate parent, and Amy Harding, who is the corporate controller. During each deposition, counsel for Emerald stated on the record that the transcripts should be labeled **Public Record Claimed Exempt/NON-DISCLOSABLE INFORMATION**.

3. Emerald and its corporate affiliates are not public companies. Their financial statements (audited or unaudited) are not released to the public and are maintained as confidential information within the company and certain lenders, who agree to maintain the confidentiality of the information. As such, the information in the documents described in paragraph 1, above, and the information in the depositions of Gotch and Harding is "commercial or financial information obtained from a person or business" that is protected from disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/7(1)(g) and 2 Ill. Adm. Code 1828.202(a)(1)(F). In addition, these documents constitute Non-Disclosable Information ("NDI") as defined by Section 101.202 of the Illinois Pollution Control Board Rules that is protected from disclosure by 35 Ill. Adm. Code Part 130, Subpart D. The disclosure of the NDI to the competitors of Emerald and/or its corporate affiliates would give them valuable information about their operations that could be used by those competitors for market analysis and market entry or capacity adjustment decisions. *See* Affidavit of Edward Gotch, attached.

4. Emerald does not intend to submit any of these documents or deposition transcripts to the Board or introduce them into evidence. Accordingly, Emerald should be excused from providing a copy of the documents or transcripts to the Board as specified in 35 Ill.

Adm. Code 130.404(a)(1). When adopted, the Board's procedural rules apparently did not contemplate that NDI would be submitted by a party other than the party seeking protection from disclosure. Requiring Emerald to file the documents would be an unwarranted application of the rule. If the Agency files any of these documents or transcripts with the Board, that filing should be in accordance with 35 Ill. Adm. Code Part 130, Subpart D and such filing should be deemed to satisfy the requirement of 35 Ill. Adm. Code 130.404(a)(1).

5. On information and belief, the Agency may seek to admit some of these documents or deposition transcripts to the Board or introduce them into evidence. To the extent the Agency takes such an action, Emerald hereby moves that the documents described in paragraph 1 and the deposition transcripts of Gotch and Harding be treated as NDI, as defined by Section 101.202 of the Board's procedural rules, and be protected from disclosure in accordance with 35 Ill. Adm. Code Part 130, Subpart D.

WHEREFORE, Emerald requests that to the extent the Agency seeks to introduce into evidence any of the documents described herein that the documents be identified and treated as NDI pursuant to 35 Ill. Adm. Code Part 130.

Respectfully submitted,

Emerald Polymer Additives LLC

Date: January 8, 2020

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

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on January 8, 2020, I have served the attached **Notice of Electronic Filing and Emerald's Motion to Treat Certain Information as Non-Discloseable** upon the following persons by electronic mail:

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/s/ Thomas W. Dimond_____

COUNTY OF CLARK)
)
STATE OF WASHINGTON)

AFFIDAVIT OF EDWARD T. GOTCH, JR.

Edward T. Gotch, Jr., being first duly sworn, on oath deposes and states that I have personal knowledge of the facts stated in this affidavit and that if sworn as a witness, I could competently testify to the following facts.

1. I am currently a board member of Emerald Performance Materials, LLC (“EPM”) and am also the Chief Executive Officer of Emerald Kalama Chemical, LLC (“Emerald Kalama”). Both Emerald Kalama and Emerald Polymer Additives, LLC (“Emerald Polymer”) are wholly owned subsidiaries of EPM. EPM is presently a holding company with no employees. My duties as Chief Executive Officer of Emerald Kalama include management oversight responsibility for the performance of Emerald Polymer

2. In the positions described above, I am generally familiar with the audited and unaudited financial information for EPM and all of its corporate affiliates and the extent of individuals who have access to that information.

3. In connection with the proceeding *In the Matter of: Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 304.122(b)*, AS 19-002, Illinois Pollution Control Board, (“Emerald Polymer Petition”), I understand that Emerald Polymer provided the following financial information to the Illinois Environmental Protection Agency (a) balance sheets for Emerald Polymer for the years ended December 31, 2015 through 2018 and the 8 months ended August 31, 2019; (b) statements of operations for Emerald Polymer for the same time periods; (c) Combined Financial Statements and Report of Independent Certified

Public Accountants, Emerald Performance Materials Group of Companies and Affiliates for the years ended December 31, 2015 through 2018; and (d) combined statements of operations, combined balance sheets and combined statements of cash flows for Emerald Performance Materials Group of Companies for the third quarter and year-to-date of 2019:

4. Items 3(a) and 3(b) described above are maintained in the consolidated accounting function that serves EPM. These documents were prepared by Amy Harding, Emerald Kalama's corporate controller, and are maintained by her and her corporate staff. There would be fewer than 10 people, all within EPM and its affiliates, who would have access to those documents.

5. Items 3(c) and 3(d) described above are also generally maintained by Ms. Harding and her corporate staff. In the ordinary course, those financial documents are also distributed to EPM's board of directors, consisting of five persons, and shareholders. The audited financial statements are, of course, published by our independent accountants, Grant Thornton, and are also distributed to EPM's lenders. Grant Thornton and our lenders are obligated to keep the documents confidential.

6. During my deposition in the Emerald Polymer Petition and also Amy Harding's deposition, some of the financial information included in the documents identified in paragraph 3 was discussed. In addition, certain other confidential information, including the capital expenditure approval processes and policies of EPM and its affiliates, was discussed. All of this information is internal to EPM and its affiliates.

7. The disclosure of the information in the documents described in paragraphs 3 and 6 to the competitors of Emerald and/or its corporate affiliates would give them valuable

information about our operations that could be used by those competitors for market analysis and market entry or capacity adjustment decisions.

Edward T. Gotch, Jr.

Edward T. Gotch, Jr.

Subscribed and sworn to before me
this 7th day of January 2020

Kori J Kemp

Notary Public

Commission expires: May 9, 2022

