

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 NOTICE AND MOTION TO USE EVIDENCE DEPOSITIONS AS EVIDENCE AT HEARING, for the above-captioned proceeding, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: December 30, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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
(217) 782-5544
Rex.Gradeless@Illinois.Gov

Respondent,

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

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

EMERALD POLYMER ADDITIVES, LLC

Thomas W. Dimond

Kelsey Weyhing

ICE MILLER LLP

200 West Madison, Suite 3500

Chicago, Illinois 60606

ILLINOIS POLLUTION CONTROL BOARD

Don Brown, Clerk

James R. Thompson Center

100 W. Randolph, Suite 11-500

Chicago, IL 60601

ILLINOIS POLLUTION CONTROL BOARD

Carol Webb, Hearing Officer

1021 North Grand Avenue East

Springfield, Illinois 62794-9274

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))

**ILLINOIS EPA'S NOTICE AND MOTION
TO USE EVIDENCE DEPOSITIONS AS EVIDENCE AT HEARING**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, and for its motion to use evidence depositions, states as follows:

1. All or any part of evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial... (3) the party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used. Ill. Sup. Ct. R. 212(b)(3).

2. The Hearing Officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged. 35 Ill. Adm. Code 101.626.

3. Here, based upon information and belief, the Illinois EPA will be unsuccessful in procuring the attendance of three out-of-state witnesses: Edward Gotch ("Gotch"), Amy Harding ("Harding"), and Chris Wrobel ("Wrobel"). *See* Illinois EPA's Subpoenas to Appear filed December 26, 2019.

4. Additionally, exceptional circumstances exist which make it desirable, in the

interest of justice, to allow the three evidence depositions be used at hearing.

5. On November 19, 2019, undersigned confirmed in a telephone conversation with Petitioner's counsel that, because several witnesses were out of state, that Wrobel and Harding would be produced for telephonic evidence depositions. Exhibit A.

6. On November 20, 2019, Petitioner's counsel confirmed this understanding/stipulation of the parties via email. Exhibit A.

7. On November 26, 2019, the Illinois EPA requested Petitioner provide a Supreme Court Rule 206(A)(1) representative deponent designee to testify on Petitioner's behalf.

8. On November 26, 2019, the Illinois EPA sent deposition notices for Harding and Wrobel indicating the evidence depositions were going to be used for the purpose of discovery and/or for use in evidence.

9. On November 27, 2019, Petitioner provided Gotch to testify on behalf of the Petitioner as its corporate Supreme Court Rule 206(A)(1) representative. Exhibit B.

10. All three evidence deposition notices were again submitted to Petitioner's counsel, on December 3, 2019. Exhibit C.

11. First, the telephone evidence deposition of Gotch was taken under oath on December 13, 2019, at 1:31p.m. at 200 West Madison Street, Suite 10 3500, Chicago, Illinois, before Valerie M. Calabria, CSR, RPR, pursuant to notice. During the deposition Gotch was represented by Petitioner's counsel and any objections to that testimony were therefore preserved by counsel for Petitioner. Gotch lives in Camas, Washington, is employed by Emerald Performance Materials, Petitioner's parent company, and sits on its board.

12. Efforts to subpoena Gotch to testify will be unsuccessful.

13. Gotch testified on behalf of Petitioner as its Rule 206(A)(1) designee, and the

Illinois EPA has exercised reasonable diligence but has been unable to procure the attendance of Gotch by subpoena.

14. Second, the telephone evidence deposition of Harding was taken under oath on December 17, 2019, at 11:01a.m. at 1021 North Grand Avenue East, Springfield, Illinois, before Kathy Johnson, pursuant to notice. During the deposition Harding was represented by Petitioner's counsel and any objections to that testimony were therefore preserved by counsel for Petitioner. Additionally, Illinois EPA's counsel reminded the parties this was an evidence deposition during the deposition without objection. (Harding Dep. p. 27) Harding works in Vancouver, Washington and is employed by Emerald Kalama Chemical, and is the Corporate Comptroller for Petitioner's parent company and therefore the Petitioner. Exhibit D.

15. Efforts to subpoena Harding to testify will be unsuccessful.

16. Harding testified on behalf of Petitioner, as Petitioner's parent corporate comptroller, and the Illinois EPA has exercised reasonable diligence but has been unable to procure the attendance of Harding by subpoena.

17. Third, the telephone evidence deposition of Wrobel was taken under oath on December 17, 2019, at 1:31p.m. at 1021 North Grand Avenue East, Springfield, Illinois, before Kathy Johnson, pursuant to notice. During the deposition Wrobel was represented by Petitioner's counsel and any objections to that testimony were therefore preserved by counsel for Petitioner. Wrobel lives in Portland, Oregon and is employed by Emerald Kalama Chemical, and is the corporate environmental health and safety manager for Petitioner's parent company.

18. Efforts to subpoena Wrobel to testify will be unsuccessful.

19. The Illinois EPA has exercised reasonable diligence but has been unable to procure the attendance of Wrobel by subpoena.

20. Additionally, upon this notice and motion in advance of trial, exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

21. Specifically, the parties understood and agreed that these depositions were going to be used as evidence depositions because these three persons lived outside Illinois, the parties stipulated via a phone conversation, and an email confirmation (Exhibit A) and agreed to have these witnesses be deposed as evidence depositions, undersigned reminded Petitioner's counsel these were evidence depositions during the deposition of Harding, and finally the notices for depositions indicated the depositions were being conducted for the purposes of discovery and/ or for use in evidence – consistent with the parties stipulations before each deposition.

WHEREFORE, Illinois EPA respectfully requests that the Hearing Officer allow the evidence depositions of Edward Gotch, Amy Harding, and Chris Worbel be admitted as evidence in the instant proceeding.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent,

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

Dated: December 30, 2019

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
(217) 782-5544
Rex.Gradeless@Illinois.gov

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CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S NOTICE AND MOTION TO USE EVIDENCE DEPOSITIONS AS EVIDENCE AT HEARING** 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 NOTICE AND MOTION TO USE EVIDENCE DEPOSITIONS AS EVIDENCE AT HEARING** 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 seven (7).

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

Electronic Filing: Received, Clerk's Office 12/30/2019
Thomas.Dimond@icemiller.com <Thomas.Dimond@icemiller.com>
Gradeless, Rex <Rex.Gradeless@illinois.gov>; Kelsey.Weyhing@icemiller.com
<Kelsey.Weyhing@icemiller.com>

From: Thomas.Dimond@icemiller.com <Thomas.Dimond@icemiller.com>
To: Gradeless, Rex <Rex.Gradeless@illinois.gov>; Kelsey.Weyhing@icemiller.com
<Kelsey.Weyhing@icemiller.com>
Subject: [External] RE: [EXT] Petition of Emerald Polymer Additives, LLC for an Adjusted
Standard from 35 Ill. Adm. Code 302.122(b), AS 19-002
Date: 20.11.2019 12:53:46 (+0000)

Rex:

I intended to email you last evening before I had to leave for a routine doctor appointment, but just ran out of time. Your summary is generally correct. I would add that we agreed that Emerald and IEPA would produce witnesses under their control, which should include Brian Koch who may soon be moving to the Dept of Natural Resources, for depositions without the need for subpoenas or payment of witness fees. Thus, to schedule depositions for IEPA's 5 disclosed witnesses and the individuals noted below (except Richards, Wolff and Dickson for whom further investigation is needed), it will be adequate for you to serve a deposition notice on Ice Miller for the Emerald-affiliated witnesses and for us to serve a deposition notice on IEPA for the IEPA-affiliated witnesses. We will confirm dates shortly and try to have confirmation of specific witnesses for specific dates.

Tom

Thomas W. Dimond
Ice Miller LLP
200 W. Madison Street, Ste. 3500
Chicago, IL 60606-3417
312-726-7125
312-208-7930 (cell)
thomas.dimond@icemiller.com

From: Gradeless, Rex [mailto:Rex.Gradeless@illinois.gov]
Sent: Tuesday, November 19, 2019 4:19 PM
To: Dimond, Thomas; Weyhing, Kelsey
Subject: RE: [EXT] Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 302.122(b), AS 19-002

****EXTERNAL EMAIL****

Kelsey and Tom:

After today's phone call, I understand the following to be true:

- Emerald Polymer Additives, LLC, through Ice Miller, will produce **Galen Hathcock** and **Mark Winters** for in-person evidence depositions at or near Marshall County. Illinois EPA's Region 3 field office or Ice Miller's Bloomington office may be used as an alternative location.
- Emerald Polymer Additives, LLC, through Ice Miller, will produce **Chris Wrobel** and **Amy Harding** for telephonic evidence depositions.
- Emerald Polymer Additives, LLC, through Ice Miller, will produce **Houston Flippen** for an in-person evidence deposition in Chicago, Illinois.
- Emerald Polymer Additives, LLC, through Ice Miller, will produce **Lance Richards's** last



known address. Or, if possible, will produce him for an in-person evidence deposition at or near Marshall County. **Electronic Filing: Received, Clerk's Office 12/30/2019**

- Emerald Polymer Additives, LLC, through Ice Miller, will produce **Scott Wolff** and **Ben Dickson's** address upon further inquiry.

Ice Miller represents only Emerald Polymer Additives, LLC, in this matter.

I have posed the following dates for conducting depositions: December 4, 5, 6, 10, 11, 12, 13, 17, 18, 19, 20. Please confirm availability for these dates and I will follow-up with more specifics with respect to which witnesses will be called on specific dates. Further, I assume the above-summation is consistent with what you too believe to be the understanding of today's telephonic conversation, and the topics discussed therein, unless I hear otherwise.

Thank you for your time and attention tot his matter. I look forward to hearing from you soon.

Sincerely,



Rex L. Gradeless
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
Office: 217-782-5544 | Fax: 217-782-9807



Please consider the environment before printing this email.

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From: Gradeless, Rex

Sent: Tuesday, November 19, 2019 2:07 PM

To: Thomas.Dimond@icemiller.com; Kelsey.Weyhing@icemiller.com

Subject: RE: [EXT] Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 302.122(b), AS 19-002

Thank you, please call 217-558-3501.

Adding Scott Wolff and Ben Dickson to the list of addresses/witnesses too. Thank you.

From: Thomas.Dimond@icemiller.com <Thomas.Dimond@icemiller.com>

Sent: Tuesday, November 19, 2019 1:54 PM

To: Gradeless, Rex <Rex.Gradeless@illinois.gov>; Kelsey.Weyhing@icemiller.com

Subject: [External] RE: [EXT] Petition of Emerald Polymer Additives, LLC for an Adjusted Standard from 35 Ill. Adm. Code 302.122(b), AS 19-002

Gradeless, Rex

From: Gradeless, Rex
Sent: Tuesday, December 3, 2019 9:12 AM
To: Thomas.Dimond@icemiller.com
Cc: Kelsey.Weyhing@icemiller.com
Subject: RE: Petition of Emerald Polymers - Deposition Schedule

The afternoon of December 13 sounds good for Mr. Gotch. How about 1:30p.m. (CST)? I'm assuming he's out west and this will be telephonic. If that assumption is incorrect, please let me know. Thank you.

From: Thomas.Dimond@icemiller.com <Thomas.Dimond@icemiller.com>
Sent: Wednesday, November 27, 2019 2:32 PM
To: Gradeless, Rex <Rex.Gradeless@illinois.gov>
Cc: Kelsey.Weyhing@icemiller.com
Subject: [External] Petition of Emerald Polymers - Deposition Schedule

Rex:
I am still trying to reach Amy Harding. We've traded calls but have missed each other.

As for the corporate organization, financial and other topics you wanted to cover, we will provide Ed Gotch, the CEO of Emerald Performance Materials. He is available December 9 or December 13. Previously, we agreed to depose Scott Twait and Gary Bingenheimer on December 9 and your deposition of Houston Flippin is the morning of December 13. We could take Ed in the afternoon of December 13 with you, me and the court reporter all in our Chicago office. Kelsey is going to depose Scott and Gary, so I am available for Ed on December 9, but I don't know what your plans are for defending and taking. Alternately, we might be able to shift some dates around. Kelsey is going to send the notices for Scott and Gary for December 9, but that can be adjusted.

Around the rest of today and I will also be in the office most of Friday.

Tom
Thomas W. Dimond
Ice Miller LLP
200 W. Madison Street, Ste. 3500
Chicago, IL 60606-3417
312-726-7125
312-208-7930 (cell)
thomas.dimond@icemiller.com



CONFIDENTIALITY NOTICE: This E-mail and any attachments are confidential and may be protected by legal privilege. If

Electronic Filing: Received, Clerk's Office 12/30/2019

you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of this E-mail or any attachment is prohibited. If you have received this E-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system.

Thank you.

ICE MILLER LLP

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))	

NOTICE OF DEPOSITION

TO: Attorneys of Record

WITNESS TO BE DEPOSED: Amy Harding, Corporate Comptroller

PLACE: Telephonic, 1-888-494-4032, Code: 5144627101, 1021 North Grand Avenue East, Springfield, IL 62794

DATE AND TIME: Tuesday, December 17, 2019, at 11:00 a.m. (Central Standard Time)

PLEASE TAKE NOTICE that the deposition of the above-named individual will be taken under oath at the above time and place pursuant to applicable state statutes and Illinois Supreme Court Rule 206(a) for the purpose of discovery and/or for use in evidence. The deposition will be taken on oral interrogatory before a Certified Shorthand Reporter.

Respectfully submitted,

Dated: December 3, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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
(217) 782-5544
Rex.Gradeless@Illinois.gov

Respondent,

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

THIS NOTICE WAS SUBMITTED ELECTRONICALLY



CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF DEPOSITION** by e-mail upon Thomas W. Dimond at the e-mail address of Thomas.Dimond@icemiller.com and upon Kelsey Weyhing at the e-mail address of Kelsey.Weyhing@icemiller.com.

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

That the number of pages in the e-mail transmission is two (2).

That the e-mail transmission took place before 4:30 p.m. on December 3, 2019.

/s/Rex L. Gradeless

December 3, 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	AS 19-002
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Standard from 35 Ill. Adm. Code)	
304.122(b))	

NOTICE OF DEPOSITION

TO: Attorneys of Record

WITNESS TO BE DEPOSED: Chris Wrobel, Environmental Health Safety

PLACE: Telephonic, 1-888-494-4032, Code: 5144627101, 1021 North Grand Avenue East, Springfield, IL 62794

DATE AND TIME: Tuesday, December 17, 2019, at 1:30 p.m. (Central Standard Time)

PLEASE TAKE NOTICE that the deposition of the above-named individual will be taken under oath at the above time and place pursuant to applicable state statutes and Illinois Supreme Court Rule 206(a) for the purpose of discovery and/or for use in evidence. The deposition will be taken on oral interrogatory before a Certified Shorthand Reporter.

Respectfully submitted,

Dated: December 3, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Rex L. Gradeless, #6303411
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
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/s/Rex L. Gradeless

December 3, 2019

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Standard from 35 Ill. Adm. Code)	
304.122(b))	

NOTICE OF DEPOSITION

TO: Attorneys of Record

WITNESS TO BE DEPOSED: Ed Gotch, CEO, Emerald Performance Materials

PLACE: Telephonic, 1-888-494-4032, Code: 5144627101, Ice Miller, 200 West Madison Street, Suite 3500, Chicago, IL 62794

DATE AND TIME: Friday, December 13, 2019, at 1:30 p.m. (Central Standard Time)

PLEASE TAKE NOTICE that the deposition of the above-named individual will be taken under oath at the above time and place pursuant to applicable state statutes and Illinois Supreme Court Rule 206(a) for the purpose of discovery and/or for use in evidence. Petitioner designated Ed Gotch to testify, as a Supreme Court Rule 206(a)(1) designee, on Petitioner's behalf on the following topics: 1) complete corporate structure, 2) financial information including assets, liabilities, expenses, capital expenditures, past and present annual operation and maintenance costs and, 3) the decision determining "the economic cost is prohibitive" for alternatives. This deposition will be taken on oral interrogatory before a Certified Shorthand Reporter.

Respectfully submitted,

Dated: December 3, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Rex L. Gradeless, #6303411
Division of Legal Counsel
Illinois Environmental Protection Agency
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P.O. Box 19276
Springfield, IL 62794-9276
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BY: /s/Rex L. Gradeless
Rex L. Gradeless

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

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/s/Rex L. Gradeless
December 3, 2019

1 **Securities, Incorporated?**

2 A. Yes.

3 Q. Okay. Now, is that something that you
4 could provide your, you know, the one balance
5 sheet, the one income statement, and the one cash
6 flow statement for Emerald Performance Materials,
7 is that something that you could -- like you've
8 provided these two documents -- you could provide
9 to Tom?

10 MR. DIMOND: I'm going to object here.
11 This is not a -- this is not a document discovery
12 deposition. This is a deposition. There's no
13 discovery request for that, and if there is we
14 will object to it.

15 MR. GRADELESS: Okay. This is an
16 evidence deposition, and we are formally
17 requesting those documents here on the record
18 right now.

19 MR. DIMOND: If you wish to request
20 documents you can send us a document request.

21 MR. GRADELESS: Well, Tom, I'm just
22 saying that I'm going to do both. I'm going to
23 request it here on the deposition. I'm going to
24 request it in writing, email, formal request.

1 These are documents that we're entitled to, given
2 these representations.

3 MR. DIMOND: No, you are not entitled
4 to them. And if you send us a document request we
5 will reply to it, but that's not an appropriate
6 question for the deponent.

7 MR. GRADELESS: Okay.

8 BY MR. GRADELESS:

9 Q. Miss Harding, that was the attorneys
10 putting their objections on the record. But are
11 those documents that I mentioned, the balance
12 sheet, the one income statement, and the one cash
13 flow statement of Emerald Performance Materials,
14 are those documents that you have access to?

15 A. Right now? No.

16 Q. When you say right now, what do you mean?

17 A. I mean on this call I don't have any --

18 Q. Right, right. But you could -- I just
19 mean you could --

20 A. Oh, yes.

21 Q. -- you could obtain those documents if
22 they were required and requested, right?

23 A. Yes.

24 Q. Okay. Now, I do -- I guess we will talk