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 TO PETITIONER'S CLOSING BRIEF, for the above-captioned proceeding, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: March 25, 2020

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

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THIS FILING IS SUBMITTED ELECTRONICALLY

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To: See attached service list.

ILLINOIS EPA'S RESPONSE TO PETITIONER'S CLOSING BRIEF

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorneys, Rex L. Gradeless and Christine Zeivel, Assistant Counsels of Illinois EPA, and for its response to Petitioner's closing brief states as follows:

I. INTRODUCTION

On February 4, 2020, the Hearing Officer in the instant case ordered the parties to file closing briefs by March 11, 2020, and any response briefs by March 25, 2020. Both Petitioner and Illinois EPA filed closing briefs on March 11, 2020. Consistent with the Hearing Officer's order, the Illinois EPA provides this response to Petitioner's closing brief.

As an initial matter, Illinois EPA recommends the Board consider the arguments within Public Comment Number 3: Sierra Club's Comment in Opposition to the Petition for an Adjusted Standard. The arguments raised within that public comment further serve as a basis for the Board denying Petitioner's request for an adjusted standard.

Petitioner's adjusted standard petition should be denied because (1) the new facts of this case make Petitioner's reliance on AS 02-5 and AS 13-2 improper considering the law of the case doctrine; (2) adjusted standards are not granted to manage another entity's waste; (3) Petitioner needs a compliance schedule and not an adjusted standard; and (4) Petitioner does not

provide the best degree of treatment. If the Board grants Petitioner the adjusted standard, Petitioner's newly proposed conditions are improper; and, the conditions proposed by Illinois EPA are justified.

II. ARGUMENTS

A. The Board Should Deny the Petition for Adjusted Standard

Illinois EPA provided post-hearing support for its Recommendation to Deny Petitioner's adjusted standard in its closing brief filed on March 11, 2020. Illinois EPA now provides additional support for its Recommendation to Deny in response to Petitioner's closing brief.

1. The New Facts of This Case Make Petitioner's Reliance on AS 02-5 and AS 13-2 Improper

This case would be simple if there were no new facts and Petitioner did not hold the burden of proof.[1] If there were no new facts, Petitioner could simply cite to information from previous adjusted standard cases (though never provided to Illinois EPA despite being subject to disclosure during discovery and required under 35 Ill. Adm. Code 101.306[2]), and argue that the previous adjusted standard cases, considered in a vacuum, means case closed. Certainly, if there were no new facts Petitioner would not have conducted extensive discovery, deposed five witnesses, requested a public hearing that was not statutorily required,[3] or engaged in four days of hearings. However, there were new facts presented in this case. These new facts make Petitioner's reliance on AS 02-5 and AS 13-2 improper considering the law of the case doctrine.

[1] Petitioner argues this is a simple case while providing the Board with a 73-page closing brief, complete with a table of contents, and 44 pages of attachments.

[2] Illinois EPA's recommendation filed on July 27, 2019, objected to Petitioner's failure to properly incorporate the records from its previous adjusted standard proceedings (AS 02-5 and AS 13-2) pursuant to Ill. Adm. Code 101.306, which requires a party seeking incorporation to file the material to be incorporated with the Board and demonstrate that the material is credible and relevant to the proceeding. Further, Illinois EPA requested these materials during discovery, but they were never disclosed. Instead, the Board and Illinois EPA are left to guess which facts Petitioner incorporates and which facts Petitioner prefers to ignore in the records of AS 02-5 and AS 13-2.

[3] Any person can request that a public hearing be held in an adjusted standard proceeding but hearings are not required. 35 Ill. Adm. Code 104.420. *See* e.g. AS 13-2 wherein a hearing did not occur.

Generally, the law of the case doctrine provides that "a rule established as controlling in a particular case will continue to be the law of the case in as long as the facts remain the same." *People v. Patterson*, 154 Ill.2d 414, 468 (Ill. 1992); *Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital v. Chevron U.S.A. Inc. and Texaco Inc.*, PCB 09-66, slip op. at 27 (July 7, 2011); *Bradley v. Howard Hembrough Volkswagen, Inc*., 89 Ill. App. 3d 121, 124 (4th Dist. 1980) (holding court is bound by views of law in its previous opinion in a case, unless the facts presented require a different interpretation). The doctrine applies to both issues of law and issues of fact and it "protects settled expectations of the parties, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end." *In the Matter of: Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment v. Midwest Generation, LLC*, 2015 WL 9460493 at *3, *citing*, *Bjork v. Draper*, 404 Ill. App. 3d 493, 501, (2010). A finding of a final judgment is required to sustain application of the doctrine. *Patterson*, 154 Ill. 2d 414 at 469. Here, the Board's orders in AS 02-5 and AS 13-2 were final decisions, and the rules and facts established as controlling in those cases continue to be the law of those cases and, where no new contrary facts have come to light, those cases alone.

This case is substantially different from AS 02-5 and AS 13-2. The record in the instant case establishes several new facts as to Petitioner, its effluent, and treatment alternatives now known for the Board to conduct more robust technical feasibility and economic reasonableness analyses. Petitioner's bootstrapping of the previous Board findings in AS 02-5 and AS 13-2 is misplaced. For example, the Board has previously found:

> "The Agency also further argues that Emerald's discharge still contains MBT and has not changed since the Board decided AS 02-5. *Id*."

> "In AS 02-5, the Board stated that ammonia nitrogen in the facility's discharge

> stems from the presence of degradable organic nitrogen compounds and their degradation in the waste treatment process. The Board noted factors, including the presence of MBT, inhibiting the nitrification of the ammonia. Because of these inhibiting factors, ammonia nitrogen released during the treatment process remains in the effluent. The Board stated that the unique characteristics of the facility's wastewater inhibited nitrification."
>
> "The record in this proceeding (AS 13-02) shows that the operation of the facility has not changed substantially since the Board granted an adjusted standard in AS 02-5. The presence of MBT continues to be a significant factor inhibiting nitrification of ammonia on the facility's discharge." AS 13-02, p. 40-41.

Here, contrary to the facts in AS 02-5 and AS 13-2, Petitioner's data shows MBT does not appear in Petitioner's toxic effluent (IEPA Ex. 14). This was the precise reason Petitioner's consultant, Houston Flippin ("Flippin"), evaluated the tertiary nitrification alternative in this case. (Tr. January 14, 2020 at 185.) Where there's no MBT after the secondary clarifier, nitrification can be achieved, and Petitioner does not need an adjusted standard. (Tr. January 14, 2020 at 185.) Additionally, and contrary to the previous adjusted standard cases, nitrification occurs within the Henry Plant. (IEPA Ex. 18 p. 32.) Petitioner further concedes it now knows that hydrogen peroxide can oxygenate the MBT and pull it out. (IEPA Ex. 18 p. 42.) Further, Petitioner has conceded it could treat the Mexichem influent prior to entering Petitioner's facility (i.e. prior to the Mexichem influent entering Petitioner's PVC tank) to reduce or eliminate the ammonia coming into Petitioner's facility. (Tr. January 15, 2020 at 108, IEPA Ex. 4, Tr. January 15, 2020 at 150-151.) Petitioner acknowledges that treating the stream coming from Mexichem, would undisputedly reduce the ammonia levels in Petitioner's toxic effluent. (Tr. January 14, 2020 at 77-78, 193.)

Finally, and contrary to the claims made by Petitioner in previous adjusted standard cases, including Petitioner's veiled suggestion in this case that Henry Plant employees could be negatively impacted by denying the adjusted standard, the Board now knows that any liability

which may ultimately be incurred with respect to this case will not have a material effect on the combined financial position or operations of Petitioner[4]. (IEPA Ex. 11A Note L, IEPA Ex. 11B Note J, IEPA Ex. 11C Note J.)

While not all the new facts merit repeating or a renewed discussion in this response brief, the new facts above, even taken alone, necessitate a rejection of Petitioner's request for an adjusted standard. Pursuant to the law of the case doctrine, the findings from the previous adjusted standard cases, AS 02-5 and AS 13-2, should be given little to no weight by the Board considering the new facts of this case.

2. Adjusted Standards are Not Granted to Manage Another Entity's Waste.

No facts in the record excuse Petitioner from accepting ammonia and nitrogen compounds from Mexichem, mixing those compounds with nitrification inhibitors, then claiming there's nothing that can be done about the ammonia in Petitioner's effluent. Galen Hathcock, the Henry Plant site director ("Hathcock"), testified the high ammonia levels in Petitioner's toxic effluent can be attributed to a combination of the MBT in the Henry Plant, Petitioner's own toxic effluent, and Mexichem's contributing ammonia stream. (Tr. January 14, 2020 at 67.)

By accepting Mexichem's waste, Petitioner has created a marketable competitive advantage with its adjusted standard. Mexichem pays (i.e. credits) Petitioner nearly $2 million a year to treat its wastewater. (Tr. January 14, 2020 at 61, IEPA Ex. 9A p. 56-59, Ex. 9B) "It's a zero-sum situation…in other words, we're not charging more than it's costing us." (Tr. January 14, 2020 at 96-97.) Mexichem, in turn, does not need a permit because it uses Petitioner's adjusted standard vicariously to discharge its ammonia into the Illinois River.

Petitioner is not providing best degree of treatment when accepting ammonia on the front

[4] Petitioner's Parent has previously paid $10 million to install a NaSH system to reduce air emissions at the Henry Plant. (Tr. January 14, 2020 at 79-80.)

end and washing the ammonia into the Illinois River on the backend. Petitioner must either pretreat the incoming stream or flip the off switch – deny Petitioner's request for an adjusted standard.

3. Petitioner Needs a Compliance Schedule – Not an Adjusted Standard.

Over the years, adjusted standards have proven ineffective at compelling Petitioner to act. The Environmental Protection Act ("Act") was designed to establish a program focused on the restoration, protection, and enhancement of the environment and to hold responsible those who cause adverse effects to the environment. 415 ILCS 5/2(b) (West 2020). The Act grants the Board its authority and charges it with determining, defining, and implementing environmental control standards and adopting rules and regulations to carry out its purpose. 415 ILCS 5/5(b) (West 2020). The Act is to be liberally construed in order to effectuate its purposes. 415 ILCS 5/2(c) (West 2020). The ultimate goal of the Act is to achieve compliance with applicable regulations by all polluters. *Monsanto Co. v. Pollution Control Board,* 67 Ill. 2d 276, 287 (1977). Yet it is clear that indefinite noncompliance with applicable ammonia effluent limits has been and remains Petitioner's goal.

As the years go by, new facts emerge that consistently show Illinois EPA has been correct about Petitioner's willful inaction. For example, Petitioner's concedes it has done nothing since 2014 to reduce ammonia levels in its effluent. *See* Petitioner's Written Answers to Board Questions filed March 6, 2020, p. 4. To gear up for this adjusted standard case, Petitioner created a "process improvement team" in 2018; this team not being formed by Petitioner's chemical manufacturing predecessors decades ago, or Petitioner's Parent in 2006, or Petitioner immediately following the last adjusted in 2013 is inexcusable. Petitioner's health, safety, and environmental manager testified that when he arrived in 2018, he was surprised about "how little

consistent data was available at the Henry Plant." (Tr. February 4, 2020 at 129.) Petitioner further admitted that when Petitioner's ammonia levels are within its adjusted standard, it does not work on reducing ammonia any further and, instead, focuses on other challenges at the Henry Plant. (Tr. January 14, 2020 at 52.) The entire point of the five-year sunset provision granted by the Board in AS 13-2 was to "encourage Petitioner to ***aggressively*** pursue means to reduce the amount of ammonia it discharges into the Illinois River or institute alternative means to alleviate the pollution". *Emerald Performance Materials, LLC v. The Illinois Pollution Control Board*, 2016 IL App (3d) 150526 (¶41). (Emphasis added).

Public Comment #3 provides an accurate summation of Petitioner's long-held strategy:

> "Even before the current standards were in effect, the former owners of the Henry Plant asked for a variance from an older version of the standard in 1992. The Henry Plant then shifted its focus to seek an adjusted standard a decade later because, as a matter of federal regulation, a "variance" requires eventual compliance with the relevant general standard from which relief is requested. Emerald April 3, 2019 Petition for Adjusted Standard at 3. In other words, it appears that Emerald has been seeking to avoid general regulations on ammonia discharges for nearly thirty years and its aim from the outset has been to make its exception from those regulations permanent rather than work to identify a means to comply."

Here, Illinois EPA can find no reason why Petitioner should not be able to fully comply with the ammonia standards, using whatever method it chooses, within the next five years. In fact, Flippin testified design and installation of a full-scale tertiary nitrification treatment system at the Henry Plant would take in the vicinity of two years. (Tr. January 14, 2020 at 244.)

Now that the record establishes the absence of MBT in Petitioner's effluent and Petitioner's ability to achieve nitrification to meet the applicable standard, the Board should deny Petitioner's request for an adjusted standard because it has no merit. Additionally, the request should be denied so Illinois EPA can work with Petitioner on a permanent and final compliance schedule through Petitioner's NPDES permit. The time has come for Petitioner to comply with

the applicable standard, an achievable and expected feat that the Board can ensure by denying Petitioner's request.

4. Petitioner Does Not Provide the Best Degree of Treatment.

Petitioner has the burden to show the Board it treats its waste stream with the best degree of treatment consistent with technological feasibility, economic reasonableness, and sound engineering judgment. 35 Ill. Adm. Code 304.102(a). Petitioner extols that the Henry Plant "exceeds the treatment standards identified by USEPA as Best Available Technology ("BAT") Economically Available for Organic Chemical, Plastics, and Synthetic Fibers industrial category". Pet. Closing Brief, p. 50. At the same time, Petitioner painfully concedes "there are no applicable federal effluent standards for ammonia from an organic chemical plant, such as the Henry Plant". Pet. Closing Brief, p. 25. Petitioner admitted USEPA's determination of BAT is based on regulations that do not include ammonia." (Tr. February 4, 2020 at 66-67.) Further undermining the point on BAT, was the fact Petitioner's consultant had *never* encountered a scenario where the technology limits from the State of Illinois were more stringent than the federal standards. (Tr. February 4, 2020 at 62.) Petitioner did not meet its burden to show it uses the best degree of treatment.

Illinois EPA does not need to prove up any designs for the Henry Plant as the Illinois EPA has no burden in an adjusted standard case. However, after Petitioner's secondary clarifier, where Petitioner has no more MBT, Petitioner's waste stream is substantially similar to just about any other industrial facility that has biological treatment, such as food or other chemicals industries, that does not have nitrifying inhibition. (Tr. January 15, 2020 at 158.) In fact, Petitioner's toxic effluent could be compared to municipal wastewater after the secondary clarifier because Petitioner has no nitrifying inhibition. *Id*. Given these facts, the Illinois EPA is

left to conclude there are "almost too many options" available to Petitioner to remove the excess ammonia coming from its toxic effluent. (Tr. February 3, 2020 at 273-278.) For the reasons discussed in Illinois EPA's closing brief, these options are all technically feasible, economically reasonable, and consistent with sound engineering judgment because the available treatments are some of the most common treatment technologies in Illinois. *See* e.g. 35 Ill. Adm. Code 370.

The plethora of options available to Petitioner are staggering. Although Illinois EPA will not design the Henry Plant for Petitioner, Illinois EPA prefers some form of tertiary nitrification (e.g. refurbished existing biotreaters, a baffled system,[5] a new tank, a baffled rectangular tank, a rotating biological contactor) as a technically feasible and economically reasonable treatment for Petitioner. Flippin also testified the lowest O&M cost and the lowest present worth cost would be either tertiary nitrification or ion exchange. (Tr. January 14, 2020 at 249.) Additionally, Illinois EPA believes that granulated activated carbon (GAC)[6], sodium peroxidase, hydrogen peroxide treatments, or any combinations thereof would also provide feasible and reasonable treatment alternatives.

In contrast to previous proceedings, the record in the instant case establishes that there is no MBT in Petitioner's final effluent, nitrification of the final effluent is possible and requiring Petitioner to utilize treatment to comply with the regulatory standard is the same as requiring any other facility on the Illinois River to do the same. The record in this case establishes new facts that render the findings of previous proceedings related to Petitioner's adjusted standard applicable to only those cases. Because Petitioner has failed to meet its burden in this

[5] The baffled system occurs in several systems throughout Illinois – specifically, the ExxonMobil Joliet refinery. Another example provided during the hearing was the Citgo oil refinery that also previously had problems meeting the 304.122(b) standard. (Tr. January 15, 2020 at 164-165.) Illinois EPA referenced these two facilities as examples of discharges that previously held adjusted standards and found technologies that worked. In contrast to these efforts, Petitioner continues to stick its head in the sand to avoid solving the ammonia issues at the Henry Plant.

[6] The Marathon refinery in Robinson, Illinois utilizes this technology.

proceeding, the Board must deny Petitioner's request for an adjusted standard.

B. Petitioner's Newly Proposed Conditions are Improper.

Eleven months after petitioning the Board for an adjusted standard, Petitioner amended some of its requested proposed conditions. *See* p. 50-56 of Pet. Closing Brief. Illinois EPA recommends the Board fully DENY Petitioner's adjusted standard, so a review of these conditions are not even required. However, in the event the Board does not agree with Illinois EPA's recommendation to fully DENY Petitioner's request for an adjusted standard, Illinois EPA provided the Board with proposed language for conditions as Exhibit A to its closing brief filed March 11, 2020. Here, Illinois provides the following comments regarding Petitioner's proposed conditions referenced by Petitioner in its closing brief:

1. Petitioner's Proposed Condition 1 – Numeric Limits

Petitioner requests a daily adjusted standard of 140 mg/L and 1,225 pounds and a 30-day average adjusted standard of 110 mg/L and 631 pounds. Pet. Closing Brief, p. 50. Instead of proposing an incremental reduction, Petitioner requests the same concentration limits granted by the Board in AS 13-2. Instead of making any reasoned calculation, Petitioner justified this request during the hearing to serve as an economic buffer in the event its production levels increase. (Tr. January 14, 2020 at 69-70.) Speculative production levels[7] are not a valid justification for an adjusted standard. Under that logic, one could also speculate an economic downturn where production decreases and, therefore, a much lower numeric limit would be appropriate. Petitioner provided no analysis and ran no models to come up with its proposed concentrations. (Tr. January 14, 2020 at 71, 77, Tr. January 15, 2020 at 20.)

[7] Petitioner never proved a casual relationship between production levels and its ammonia effluent levels. In fact, Winters' testimony showed: "during the course of this month (December 2019), we've been actually doing some recipe changes and tests with one of our processes that we didn't expect to be a big MBT contributor because of how little it runs, but despite its smaller flow rate compared to others in the waste stream and how little it runs, it turned out to be a much bigger offender than we had thought." (IEPA Ex. 18 p. 32.)

When given the opportunity to develop and propose effluent limits with which Petitioner could comply reliably given historical effluent data, Petitioner rejected that approach. (Compare IEPA Ex. 13A, Ex. 13B.) Instead, for load limits, Petitioner arbitrarily took 25 percent off its current adjusted standard (1633 pounds per day and 841 pounds average per 30 days) without taking daily monitoring reports or production numbers into account to calculate the basis for the 25 percent figure. (Tr. January 15, 2020 at 184, IEPA Ex. 7.)

2. Petitioner's Proposed Condition Three – Minimum Eight Year Sunset

Petitioner's proposed condition three requests a 5-year sunset provision with an additional 3 years, after the Board's next decision, if Petitioner petitions the Board within 6 months of expiration. Pet. Closing Brief, p. 51-52. If the Board grants this condition, Petitioner's future actions can be anticipated based on its past practice. As was the case in the instant case, Petitioner will do nothing for the next 5 years. Six months before April 16, 2025, Petitioner will file another adjusted standard case. Over the course of an adjusted standard proceeding (approximately one or two years), Petitioner will have no incentive to comply with the adjusted standard or see that the adjusted standard case proceeds expeditiously. After the Board decides that case, Petitioner will then have another 3 years to comply.

A condition from this proceeding being placed on the enforceability of any future adjusted standard case would be unenforceable as a matter of law. Petitioner will use the same strategy of the past: wait for the expiration of the additional 3 years to near, create another "team" that fights for the next adjusted standard, obtain a new adjusted standard, and do nothing unless compelled. Remember, when Petitioner's ammonia levels are within its adjusted standard, it does not work on reducing ammonia any further and, instead, focuses on other challenges at the Henry Plant. (Tr. January 14, 2020 at 52.) Petitioner is literally the test case petitioner in the

State of Illinois for why sunset provisions in adjusted standards are appropriate: to "encourage Petitioner to ***aggressively*** pursue means to reduce the amount of ammonia it discharges into the Illinois River or institute alternative means to alleviate the pollution". *Emerald Performance Materials, LLC v. The Illinois Pollution Control Board,* 2016 IL App (3d) 150526 (¶41). (Emphasis added). Petitioner's proposed condition 3 effectively would allow for a minimum eight-year sunset provision. By then, Petitioner should already be complying with the numeric standards under a compliance schedule. Furthermore, extending any adjusted standard granted in this case for three years beyond the next Board Order effectively renders that future Board Order ineffective for three years following issuance. Finally, if the Board were to deny Petitioner's request for adjusted standard in this case or any future proceeding (Pet. Closing Brief, p. 56), Petitioner's remedy is to seek a compliance schedule through the permitting process, not continue to operate under an expired and denied adjusted standard. For the above listed reasons, Illinois EPA vigorously objects to this proposed condition.

C. Illinois EPA's Response to Petitioner's Argument that Illinois EPA's Proposed Conditions are Unjustified.

Illinois EPA recommends the Board DENY Petitioner's request for an adjusted standard. Thus, the proposed language in Exhibit A of Illinois EPA's closing brief need not be considered if the Board denies this petition. However, in the event the Board declines to do anything other than fully DENY Petitioner's request for an adjusted standard over Illinois EPA's recommendation, Illinois EPA, while still standing by all proposed conditions in Exhibit A not referenced here, provides the following responses to Petitioner's closing brief comments:

1. Proposed IEPA Language, Exhibit A, No. 1: Numeric Limits

The proposed language here provides that any adjusted standard granted by the Board should not exceed a daily maximum of 110 milligrams per liter (mg/L) and no more than 553

pounds per day ("lbs/day") and Petitioner's 30-day average should not exceed 89.9 mg/L and no more than 475 lbs/day.

Illinois EPA looked at the DMR data from September 2018 to May 2019 for the highest monthly average and daily maximum concentration as well as monthly average and daily maximum loads. To account for any other unforeseen circumstances which could affect the normal operation of the facility, (e.g. production (Tr. February 3, 2020 at 212-214.)), the Agency applied a 10% increase in the monthly average load. The Agency then compared the monthly average and daily maximum load for the period January 2015 to July 2019 and determined that the monthly average and daily maximum loads were not exceeded in this time-period.

This proposed language was made using best professional judgement after Illinois EPA's review of historical data. Specifically, Illinois EPA reviewed all load limits and daily concentration DMR data from 01/31/2015 through 07/31/19 and 30-day average concentration data from 10/31/16 through 07/31/19. Petitioner never exceeded Illinois EPA's proposed load limits in that 4.5-year period. Petitioner only exceed Illinois EPA's proposed concentration limits four[8] times from 01/31/2015 through 07/31/19, however, Petitioner claims to be striving to provide better treatment.

This proposed language serves only as a ceiling for any adjusted standard granted by the Board. This should not be construed as Illinois EPA changing its previous position that a lower standard, including complete denial, is more appropriate to compel Petitioner to act. *See* Illinois EPA's Recommendation in AS 13-02.

2. Proposed IEPA Language, Exhibit A, No. 4(c): Treatment Capacity

This proposed language was used because Illinois EPA does not have all the information

[8] Daily Max over 110 mg/L: 4/30/18 (120 mg/L); 7/31/16 (120 mg/L); 7/31/15 (130 mg/L). Monthly Average over 89.9 mg/L (monthly average reported on DMRs was October 2016 - May 2019): 3/31/18 (99.3 mg/L).

needed with respect to Petitioner's treatment capacity. When Illinois EPA requests Petitioner investigate and provide to Illinois EPA how much treatment capacity it needs prior to and following the secondary clarifiers to complete nitrification, Illinois EPA is looking for the aeriation volume required to achieve nitrification prior to the secondary clarifier and the aeration volume required to achieve nitrification after the secondary clarifier. This information was not included in Petitioner's Exhibit 12, p. 6, table 1.

3. Proposed IEPA Language, Exhibit A, No. 4(d): Optimized Biotreaters

Petitioner's comments regarding this proposed condition are all red herrings that seek to dismiss the validity of this option with artificial "problems" for implementation. For example, Petitioner says, "it's not just a matter of pipes" and the biotreaters need "stocking the biotreater tanks with expensive (no cost estimates provided) media, would require pumping the effluent, would require alkalinity addition and steam addition during the winter." Pet. Closing Brief, p. 63-64. This vague dismissal does not provide any evidence that the alternative is technically infeasible or economically unreasonable and further highlights how Petitioner has failed to sufficiently meet its burden. To that end, the Illinois EPA has no reason to believe that repurposing Petitioner's biotreaters is not the most economical way of achieving tertiary nitrification.

Petitioner then tries to further avoid responsibility by saying that now, after 25 years, it needs redundant capacity to refurbish its only working biotreater. Pet. Closing brief, p. 64. Petitioner fortuitously claims to have a multiyear "plan" to refurbish the three biotreater tanks not currently in operation; this too is a red herring. Petitioner provides this as a reason for not implementing such a simple cost-effective solution without providing the Board any plans on using the three idle biotreaters as backup. (Tr. January 14, 2020 at 31, Tr. January 15, 2020 at

202-203.) Even if completely true, once completed, that backup capacity should not be needed for decades to come after refurbishing the working biotreater. Petitioner could get 20 years of tertiary nitrification with very little additional investment in equipment. Petitioner claims to have privately discussed bringing the other biotreaters online as additional biotreater capacity but does not propose to do so here. (IEPA Ex. 18 p. 52.)

4. Proposed IEPA Language, Exhibit A, No. 4(e): Mexichem Data

This language was proposed so that Illinois EPA could use that information to request any modifications to numeric limits if appropriate.

5. Proposed IEPA Language, Exhibit A, No. 4(k): Petition to Board

Petitioner's comments regarding this condition have no merit. This proposed language generally allows Illinois EPA to petition to Board for a modification of any numeric limits as new information becomes available. This condition was in Petitioner's previous adjusted standard from AS 13-2 and upheld in *Emerald Performance Materials, LLC v. The Illinois Pollution Control Board*, 2016 IL App (3d) 150526, (¶15).

6. Proposed IEPA Language, Exhibit A, No. 4(l): l. Petitioner

Petitioner's comments regarding this condition have no merit. This proposed language was in Petitioner's previous adjusted standard from AS 13-2 and upheld in *Emerald Performance Materials, LLC v. The Illinois Pollution Control Board*, 2016 IL App (3d) 150526, (¶15).

III. CONCLUSION AND RECOMMENDATION

Petitioner must be compelled by the Board to avail itself to the multitude of options it has to eliminate the ammonia levels in its toxic effluent. Petitioner must act and Illinois EPA believes Petitioner will not meaningfully act unless compelled by the Board.

WHEREFORE, for the reasons stated herein, Illinois EPA respectfully recommends that the Board fully DENY Petitioner's petition for adjusted standard as Petitioner has not met its burden of proof to obtain an adjusted standard. In the event the Board decides to do anything other than fully DENY Petitioner's request for an adjusted standard over Illinois EPA's recommendation, Illinois EPA provided language for consideration attached to its closing brief filed on March 11, 2020, as Exhibit A.

Dated: March 25, 2020

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THIS FILING IS SUBMITTED ELECTRONICALLY

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

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

BY: /s/Christine Zeivel
Christine Zeivel

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S RESPONSE TO PETITIONER'S CLOSING BRIEF** by e-mail upon Thomas W. Dimond at the e-mail address of Thomas.Dimond@icemiller.com, Kelsey Weyhing at the e-mail address of Kelsey.Weyhing@icemiller.com, Christine Zeivel at the e-mail address of Christine.Zeivel@illinois.gov, upon Don Brown at the e-mail address of don.brown@illinois.gov, and upon Carol Webb at the e-mail address of Carol.Webb@illinois.gov.

That I have served the attached **ILLINOIS EPA'S RESPONSE TO PETITIONER'S CLOSING BRIEF** 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 March 25, 2020.

I herein certify that each hearing exhibit being electronically filed is an accurate reproduction of the corresponding exhibit offered at the hearing.

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

That the number of pages in the e-mail transmission is nineteen (19).

That the e-mail transmission took place before 4:30 p.m. on the date of March 25, 2020.

/s/Rex L. Gradeless
March 25, 2020