

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

| | | | |
|------------------------|-------------|---|--------------|
| DERSCH ENERGIES, INC. | , |) | |
| | |) | |
| | Petitioner, |) | |
| v. | |) | PCB 2017-003 |
| | |) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL | |) | |
| PROTECTION AGENCY, | |) | |
| | Respondent. |) | |

NOTICE

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board **ILLINOIS EPA'S MOTION TO STRIKE**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: December 7, 2020

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| | Respondent. |) | |

MOTION TO STRIKE

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.502, hereby requests that the Illinois Pollution Control Board (“Board”) strike The exhibits to Petitioner’s Motion for Summary Judgement except those found within the Administrative Record. In support of this motion, the Illinois EPA states as follows:

Addition of Documents Not Within Administrative Record

When reviewing an Illinois EPA determination, the Board must decide whether the application, as submitted, demonstrates compliance with the Act and Board regulations. Rantoul Township High School District No. 193 v. Illinois EPA, PCB 03-42 (April 17, 2003), p. 3. In deciding whether the Illinois EPA’s decision under appeal was appropriate, the Board must look to the documents within the Administrative Record. When making a decision on a motion for summary judgement, the only undisputed facts are those contained within the Administrative Record as they contain what records were relied upon by the Agency when the decision was made. While some of the documents may have been admitted by the hearing officer at hearing, that does not make them appropriate

for submittal during a Motion for Summary Judgement argument. It should be noted that Board hearing officers typically admit most documents at hearing for the full Board to determine their relevance while deciding the case, and the admittance at hearing does not relate to how much credence the full Board has given a document when making a decision. Further, the fact that a document was on the Agency's website does not mean that it belongs in the Administrative Record or that it is therefore an undisputed fact in a Motion for Summary Judgement. What is relied upon by the Agency in making its decision is what is the most relevant information and that consists of what was submitted to the Agency and what was reviewed by the Project Manager in making the decision. The documents attached as exhibits to the Petitioner's Motion for Summary Judgement that are not a part of the record were not reviewed by the Project Manager in making the decision. Therefore, these exhibits need to be stricken from the Motion and not considered by the Board in making its decision.

Further, the Agency has not had the opportunity to cross examine on these documents as it would have if the case had gone to hearing. A Motion for Summary Judgement is simply not the place to amend the record or to admit documents as it just highlights a material issue of fact, when there is not one if the argument is just made considering the documents contained within the record itself.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board strike the exhibits attached to Petitioner's Motion for Summary Judgement that are not a part of the Administrative Record.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
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Dated: December 7, 2020

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on **December 7, 2020**, I served true and correct copies of **ILLINOIS EPA'S MOTION TO STRIKE** via the Board's COOL system and email, upon the following named persons:

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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