

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Carol Webb, Hearing Officer	Melanie Jarvis
Illinois Pollution Control Board	Division of Legal Counsel
1021 N. Grand Avenue East	1021 North Grand Avenue East
P.O. Box 19274	P.O. Box 19276
Springfield, IL 62794-9274	Springfield, IL 62794-9276
(Carol.Webb@illinois.gov)	(Melanie.Jarvis@illinois.gov)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Motion for Authorization of Payment of Attorney's Fees as Costs of Corrective Action, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 12<sup>th</sup> day of September, 2022. The number of pages in the e-mail transmission is 16 pages.

Respectfully submitted,

DERSCH ENERGIES, INC.,  
Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

DERSCHE ENERGIES, INC.,	)	
Petitioner,	)	
v.	)	PCB 2017-003
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**MOTION FOR AUTHORIZATION OF PAYMENT OF  
ATTORNEY'S FEES AS COSTS OF CORRECTIVE ACTION**

NOW COMES Petitioner, DERSCH ENERGIES, INC., by its undersigned counsel, and pursuant to Section 57.8(1) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(1)), petitions the Illinois Pollution Control Board (hereinafter "the Board") for an order authorizing payment of legal costs, and in support thereof states as follows:

1. On August 11, 2022, the Board entered an interim opinion and order entering judgment in favor of Petitioner and reversing twelve deductions made by the Illinois Environmental Protection Agency (hereinafter "the Agency") to Petitioner's corrective action plan budget. Dersch Energies, Inc. v. IEPA, PCB 17-3, at slip op at 36 (Aug. 11, 2022).<sup>1</sup>

2. Furthermore, the Board directed Petitioner to file a statement of legal fees that may be eligible for reimbursement with justification for why the Board should exercise its discretion to reimburse those fees. Id.

3. Attached hereto is the Affidavit of Patrick D. Shaw, documenting the legal costs in this matter, which are \$32,676.30, consisting of \$32,600.00 in attorney's fees and

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<sup>1</sup> One of the cuts was reversed on summary judgment at an earlier date. Dersch Energies, Inc. v. IEPA, PCB 17-3, at slip op at 35 (June 17, 2021).

\$76.30 in costs. This affidavit is modeled on previous affidavits utilized by undersigned counsel and found to have been sufficient by the Board. E.g., Prime Location Properties v. IEPA, PCB No. 9-67, at p. 5 (Nov. 5, 2009). It sets forth the legal services provided, the identity of the attorney providing the legal services, and itemization of the time expended for the individual service, and the hourly rate charged. Id.

4. The Board has previously recognized undersigned counsel's experience in underground storage tank appeals. Prime Location Properties v. IEPA, PCB No. 9-67, at p. 6 (Nov. 5, 2009). His billing rate is \$200 per hour, which is believed to be a reasonable rate for environmental attorneys who practice before the Board, and which has been an acceptable billing rate in previous attorney-fee awards. E.g., City of Benton Fire Department, PCB No. 17-1, slip op. at 3 (Feb. 4, 2016)

5. All of the legal costs sought herein were incurred "seeking payment under Title XVI and the plain language of Section 57.8(l) of the Act allows for the awarding of legal fees." Illinois Ayers Oil Co. v. IEPA, PCB 03-214, at p. 8 (Aug 5, 2004).

6. The award of legal costs are discretionary with the Board. Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003). Historically, the Board has initially and fully considered the reasonableness of the claimed legal defense costs before exercising its discretion to authorize their payment. Evergreen FS, v. IEPA, PCB No. 11-51 (Sept. 6, 2012). In Illinois Ayers Co. V. IEPA, PCB 03-214 (Aug. 5, 2004), the petitioner urged the Board to follow federal precedents arising under public interest statutes, which assume that a prevailing party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). While the Board has made no express

comment on this presumption, the Board has generally awarded litigation costs whenever the petitioner has prevailed on the issues either completely or substantially. See City of Benton Fire Department, PCB No. 17-1, slip op. at 3 (Feb. 4, 2016); Abel Investments v. IEPA, PCB 16-108, at p. 4 (Mar. 2, 2017); Knapp Oil Co. v. IEPA, PCB 16-103, at p. 3 (Nov. 17, 2016); Burgess v. IEPA, PCB 15-186, at p. 11 (Nov. 5, 2015); Estate of Gerald D. Slightom v. IEPA, PCB 2011-025 (Nov. 5, 2015); Chatham BP v. IEPA, PCB 15-173 (Sept. 3, 2015); McAfee v. IEPA, PCB 15-84 (May 21, 2015); PAK-AGS v. IEPA, PCB 15-14 (March 5, 2015); Chatham BP v. IEPA, PCB 14-1 (Feb. 5, 2015); Evergreen FS v. IEPA, PCB 11-51 (Sept. 6, 2012); Wheeling/GWA Auto Shop v. IEPA, PCB 10-70 (Sept. 22, 2011); Zervos Three, v. IEPA, PCB 10-54 (June 2, 2011); Dickerson Petroleum v. IEPA, PCB 09-87 (Dec. 2, 2010); Prime Location Properties v. IEPA, PCB 9-67 (Nov. 5, 2009); Swif-T Food Mart v. IEPA, PCB No. (Aug. 19, 2004); Illinois Ayers Co. v. IEPA, PCB No. 03-214 (Aug 5, 2004); Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003).

8. Petitioner prevailed in full in reversing the Agency's twelve deductions totaling over \$7,000.00 in corrective action costs. The legal costs in this case were reasonable given the number of legal issues, each of which for the most part necessitated independent treatment. The length of the Board's interim opinion and order reflects the amount of work involved, which also included multiple motions and eventually an evidentiary hearing and post-hearing briefs. In addition, the appeal involved significant issues, the resolution of which clarify the supporting documentation appropriate for a budget and should help resolve or simplify similar pending or future matters.

9. Accordingly, Petitioner asks the Board to exercise its discretion to award the legal defense costs incurred seeking payment for corrective action under Title XVI.

WHEREFORE, Petitioner, DERSCH ENERGIES, INC., requests that the Board authorize payment from the Leaking Underground Storage Tank Fund in the amount of \$32,676.30, in attorney's fees and litigation costs pursuant to 415 ILCS 5/57.8(1), and such other and further relief as the Board deems meet and just.

Respectfully submitted,

DERSCH ENERGIES, INC.,  
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW  
Its attorney

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)

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

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

STATE OF ILLINOIS        )  
                                  ) ss.  
COUNTY OF SANGAMON )

**AFFIDAVIT OF PATRICK D. SHAW  
VERIFYING ATTORNEY FEES**

Affiant, Patrick D. Shaw, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.

2. I am an attorney duly licensed to practice law in the State of Illinois; and I am the attorney of record for Petitioner, Dersch Energies, Inc., in the case entitled Dersch Energies, Inc. v. IEPA, PCB 2017-003.

3. Attached hereto as Exhibit A is a printout from my bookkeeping software detailing legal defense costs incurred in this matter. At all times relevant hereto my hourly rate has been \$200 per hour, which is the regular and ordinary billing rate charged all of my clients. I am generally familiar with the hourly rates of environmental attorneys practicing in Springfield, Illinois and before the Board, and believe this rate to be comparable, if not less, than other such attorneys.

4. I began working on the appeal in August of 2016, filing the Petition for Review

shortly thereafter. In March of 2017, the Agency filed the record with the Board, though the Agency provided an advance courtesy copy of the record to me earlier. I started working on a motion for summary judgment in late 2018, was unable to find the time to resume until late 2020. The motion was filed in November of 2020, to which the Agency filed both a response and a motion to strike which necessitated a reply and response accordingly. The Agency filed its own motion for summary judgment in January of 2021, to which I filed a response, followed later by a response to the Agency's motion for leave to file a reply. The Board denied the motions for summary judgment, except as to one issue favoring Petitioner, and directed the parties to hearing. A hearing was held in this matter on September 15, 2021, and the parties filed post-hearing briefs thereafter.

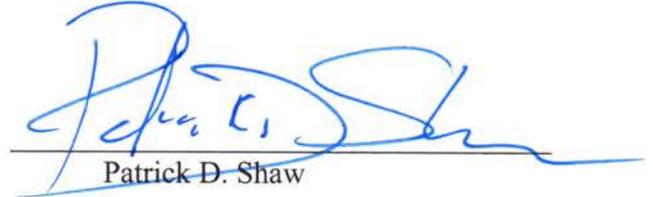
6. Exhibit A identifies the legal work performed and the attorney's fees incurred in this matter. It reveals the date the work was performed, the description of the work performed, the amount of time spent, and the total fees incurred. Filing fees, postage and photocopying charges are also identified.

7. The number of deductions raised in this appeal were more than I have typically seen in an underground storage tank appeal, many of which raised multiple issues and justifications in turn. As such, it imposed additional organizational complications, and consequential burdens on keeping the argument simple and clear in order to meet a petitioner's burden of persuasion.

7. The legal defense costs incurred in seeking payment for corrective action herein total \$32,676.30, consisting of \$32,600.00 in attorney-time, and \$76.30 in costs (which consist of the filing fee and the copying charges for serving the petition for review on the Agency).

FURTHER AFFIANT SAYETH NOT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Patrick D. Shaw

Electronic Filing: Received, Clerk's Office 09/12/2022

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

Invoice submitted to:  
CW3M Company  
701 South Grand West  
Springfield IL 62704

September 12, 2022

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
8/8/2016 Receive & review Agency decision ltr; check deadlines and e-mail client Dersch	0.10 200.00/hr	20.00
8/10/2016 Research and begin drafting petition for review; tel conf. w/ consultant; receive & review e-mails and Dersch	3.20 200.00/hr	640.00
8/12/2016 Draft Petition for Review; email draft to client Dersch	4.20 200.00/hr	840.00
8/15/2016 Receive & review e-mails; revise and file petition for review Dersch	0.50 200.00/hr	100.00
8/23/2016 Meeting w/ consultant re strategy (partial) Dersch	0.50 200.00/hr	100.00
8/25/2016 Receive & review Board Order Dersch	0.10 200.00/hr	20.00
9/7/2016 Receive & review Hrg Officer Order Dersch	0.10 200.00/hr	20.00

CW3M Company

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	<u>Hrs/Rate</u>	<u>Amount</u>
9/12/2016 Draft waiver of decision deadline Dersch	0.10 200.00/hr	20.00
10/4/2016 Telephone conf. w/ IEPA atty; tel conf. w/ Board Hrg Officer; e-mail subject of conversation with IEPA to client Dersch	0.20 200.00/hr	40.00
10/31/2016 Review file and e-mail proposed strategy to client Dersch	0.70 200.00/hr	140.00
11/1/2016 Telephone IEPA atty; tel conf. w/ Hrg Officer; receive & review Hrg Officer Order Dersch	0.10 200.00/hr	20.00
11/2/2016 Receive & review settlement proposal/response from IEPA; e-mail to client w/ comments; receive & review response from client Dersch	0.10 200.00/hr	20.00
11/7/2016 Conference at consultants regarding strategy and response to settlement ltr Dersch	1.50 200.00/hr	300.00
11/10/2016 Tel IEPA regarding settlement Dersch	0.10 200.00/hr	20.00
 Tel client re settlement Dersch	 1.30 200.00/hr	 260.00
11/14/2016 Draft and file waiver of decision deadline Dersch	0.10 200.00/hr	20.00
1/9/2017 Tel conf. w/ Agency & Hrg Officer; receive Hrg Officer order Dersch	0.10 200.00/hr	20.00
1/31/2017 Receive and preliminary review of administrative record Dersch	1.00 200.00/hr	200.00
3/13/2017 Review file; tel conf. w/ Agency; tel conf. w/ Board Hrg Officer Dersch	0.10 200.00/hr	20.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
3/22/2017 Draft and file waiver of decision deadline Dersch	0.10 200.00/hr	20.00
9/5/2018 Review file and start motion Dersch	3.70 200.00/hr	740.00
4/22/2019 Review budget and draft summary chart of cuts made Dersch	4.90 200.00/hr	980.00
5/20/2019 Review record and begin drafting fact section Dersch	3.60 200.00/hr	720.00
6/18/2019 Draft statement of facts for Dersch brief Dersch	3.50 200.00/hr	700.00
7/10/2019 Tel consultant re status; Dersch	0.40 200.00/hr	80.00
8/24/2020 Revise fact statement for motion and draft chronology Dersch	2.80 200.00/hr	560.00
8/27/2020 Draft motion for summary judgment Dersch	3.70 200.00/hr	740.00
8/28/2020 Draft motion for summary judgment Dersch	2.40 200.00/hr	480.00
9/1/2020 Research caselaw/statutes re copying charges Dersch	1.40 200.00/hr	280.00
9/2/2020 Draft memo to file re copying charges Dersch	1.30 200.00/hr	260.00
9/3/2020 Revise statement of facts Dersch	1.10 200.00/hr	220.00
9/4/2020 Revise statement of facts and legal arguments re consultant time Dersch	2.10 200.00/hr	420.00
9/9/2020 Research and draft summary judgment motion Dersch	2.90 200.00/hr	580.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
9/10/2020 Draft motion for summary judgment Dersch	1.20 200.00/hr	240.00
9/11/2020 Draft motion for summary judgment Dersch	2.00 200.00/hr	400.00
9/14/2020 Draft motion for summary judgment re consulting materials Dersch	3.70 200.00/hr	740.00
9/28/2020 Research and draft motion for summary judgment Dersch	4.50 200.00/hr	900.00
10/9/2020 Review Agency instructions and Board opinions regarding use re supplies Dersch	1.40 200.00/hr	280.00
10/19/2020 Draft motion for summary judgment Dersch	2.80 200.00/hr	560.00
10/26/2020 Draft motion for summary judgment Dersch	2.90 200.00/hr	580.00
10/30/2020 Revise budget chart summary Dersch	1.80 200.00/hr	360.00
11/6/2020 Draft copying issue portion of motion Dersch	3.20 200.00/hr	640.00
11/9/2020 Revise motion for summary judgment; e-mail draft to client for review Dersch	2.80 200.00/hr	560.00
11/10/2020 Receive & review response from client Dersch	0.10 200.00/hr	20.00
11/16/2020 E-mail follow-up questions to client Dersch	0.80 200.00/hr	160.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
11/20/2020 Draft legal standards section and insert in motion Dersch	1.60 200.00/hr	320.00
11/23/2020 Revise motion for summary judgment Dersch	5.80 200.00/hr	1,160.00
11/24/2020 Revise motion for summary judgment Dersch	3.30 200.00/hr	660.00
11/25/2020 Revise motion for summary judgment Dersch	3.00 200.00/hr	600.00
11/30/2020 Review and file motion; e-mail copy to client Dersch	1.00 200.00/hr	200.00
12/7/2020 Receive & preliminary review motion to strike Dersch	0.20 200.00/hr	40.00
12/10/2020 Receive and preliminary review of Agency's Response to MSJ Dersch	0.10 200.00/hr	20.00
12/14/2020 E-mail recent Agency filings to client Dersch	0.40 200.00/hr	80.00
12/18/2020 Draft response to motion to strike Dersch	1.90 200.00/hr	380.00
12/21/2020 Draft and file response to motion to strike Dersch	4.10 200.00/hr	820.00
12/22/2020 Draft reply in support of motion for summary judgment Dersch	3.10 200.00/hr	620.00
12/23/2020 Draft reply in support of motion for summary judgment Dersch	3.40 200.00/hr	680.00
12/24/2020 Revise and file reply; e-mail filings to client Dersch	1.00 200.00/hr	200.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
1/13/2021 Tel status conf. w/ IEPA and Board Dersch	0.10 200.00/hr	20.00
1/29/2021 Receive & review IEPA's motion for summary judgment Dersch	0.30 200.00/hr	60.00
2/12/2021 Draft Response to Agency's Motion for Summary Judgment Dersch	1.80 200.00/hr	360.00
2/18/2021 Receive & review IEPA Reply; review filings; e-mail to client with status Dersch	2.80 200.00/hr	560.00
2/19/2021 E-mail to client reponse to questions; receive reply Dersch	0.30 200.00/hr	60.00
3/2/2021 Draft Response to Motion for Leave to File Reply Dersch	2.30 200.00/hr	460.00
3/4/2021 Revise and file Response to Agency motion Dersch	0.60 200.00/hr	120.00
6/17/2021 Receive & review Board Opinion Dersch	0.20 200.00/hr	40.00
7/19/2021 Review opinion and e-mail to client w/ notes; tel client Dersch	1.20 200.00/hr	240.00
7/20/2021 Tel conf. w/ Hrg Officer & IEPA; schedule hearing date; e-mail to client Dersch	0.30 200.00/hr	60.00
7/22/2021 Receive & review Notice of Hearing Dersch	0.10 200.00/hr	NO CHARGE
9/7/2021 Review file; prepare hrg outline; e-mail same to consultant for Meeting with client to review status tommorow. Dersch	3.00 200.00/hr	600.00

CW3M Company

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	<u>Hrs/Rate</u>	<u>Amount</u>
9/8/2021 Meeting w/ consultant to prepare for hrg Dersch	3.40 200.00/hr	680.00
9/14/2021 Preparation for hearing; e-mails w/ client; tel conf. w/ consultant; draft questions outline for witnesses Dersch	5.10 200.00/hr	1,020.00
9/15/2021 Hearing; Meeting with consultant before and after; receive & review Hrg Officer Report Dersch	4.60 200.00/hr	920.00
9/17/2021 Review Board's procedural rules; draft and file Certification of Petitioner's Hearing Exhibits Dersch	0.50 200.00/hr	100.00
9/30/2021 Receive & tentative review of hearing transcript; e-mail to client Dersch	0.30 200.00/hr	60.00
10/6/2021 Draft post-hearing brief Dersch	2.50 200.00/hr	500.00
10/7/2021 Draft post-hearing brief Dersch	4.80 200.00/hr	960.00
10/8/2021 Revise and file post-hearing brief Dersch	5.10 200.00/hr	1,020.00
10/25/2021 Receive & quick review of Agency post-hearing brief; e-mail to client Dersch	0.20 200.00/hr	40.00
10/28/2021 Draft reply to post-hrg brief; e-mail client Dersch	5.70 200.00/hr	1,140.00
10/29/2021 Revise and file reply post-hrg brief Dersch	6.50 200.00/hr	1,300.00
11/1/2021 E-mail reply brief w/ comments to client Dersch	0.20 200.00/hr	40.00

CW3M Company

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	<u>Hrs/Rate</u>	<u>Amount</u>
11/5/2021	0.30 200.00/hr	60.00
Receive & review IEPA motion for leave to file reply to reply Dersch		
8/15/2022	2.30 200.00/hr	460.00
Receive & review Board order; compare with motion for summary judgment; e-mail to client w/ comments Dersch		
9/9/2022	2.00 200.00/hr	400.00
Draft motion for attorney fees Dersch		
9/12/2022	2.50 200.00/hr	500.00
Revise and file motion Dersch		
For professional services rendered	<u>163.10</u>	<u>\$32,600.00</u>
Additional Charges :		
8/15/2016		75.00
Pollution Control Board Filing Fee Filing Fee		
Copying costs for August 15, 2016 Photocopies		1.30
Total additional charges		<u>\$76.30</u>