

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

DERSCH ENERGIES, INC.,	)	
Petitioner,	)	
v.	)	PCB 2017-003
	)	(LUST 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
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioner's Response to Illinois EPA's Motion for Summary Judgment, a copy of which is herewith served upon the above parties of record in this cause.

The undersigned hereby certifies that I served the aforementioned document by e-mail to each of the persons listed above at the above e-mail address on the 12<sup>th</sup> day of February, 2021, and the number of pages in the e-mail transmission are 3.

DERSCH ENERGIES, INC.,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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**PETITIONER'S RESPONSE TO**

**ILLINOIS EPA'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Petitioner, DERSCH ENERGIES, INC., by its undersigned counsel,  
pursuant to Section 101.500(d) of the Board's Procedural Rules (35 Ill. Adm. Code §  
100.500(d)), as follows:

**ARGUMENT**

Illinois EPA submits this motion for summary judgment on the basis of the administrative record, but contains almost no discussion of the facts in the record to assist the Board. Nor does the motion address all of the legal provisions cited in the Agency decision letter under review. For its response to the Illinois EPA's Motion for Summary Judgment, Petitioner hereby incorporates Petitioner's Motion for Summary Judgment filed November 30, 2020 herein.

Furthermore, the Illinois EPA repeats certain arguments pertaining to Abel Investments v. IEPA, PCB 16-108 (Dec. 15, 2016) and other issues that were raised in Illinois EPA's Response to Petitioner's Motion for Summary Judgment. For its response, Petitioner hereby incorporates Petitioners Reply in Support of Petitioner's Motion for Summary Judgment filed December 24, 2020 herein.

Finally, the posture of the case before the Board now is that the parties agree that there are no genuine issues of material fact, though they disagree as to what facts may be considered by the Board. See Statebank of Cherry v. CGB Enterprises, 2013 IL 113836, ¶¶ 65-66 (where one party files a summary judgment motion and the other files a motion for judgment on the pleadings, both concede the absence of factual issues and invite the court to decide the question as a matter of law).

**CONCLUSION**

WHEREFORE, Petitioner, DERSCH ENERGIES, INC., prays that the Board deny the motion for summary judgment and for such other and further relief as it deems meet and just.

DERSCH ENERGIES, INC.,  
Petitioner

LAW OFFICE OF PATRICK D. SHAW

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