

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 Motion to Strike, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the documents described above, were today served upon the Hearing Officer and Division of Legal Counsel by electronic-mail, this 21<sup>st</sup> day of December, 2020. The number of pages of this filing is 4.

DERSCH ENERGIES, INC.,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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**PETITIONER'S RESPONSE TO MOTION TO STRIKE**

NOW COMES Petitioner, DERSCH ENERGIES, INC., by its undersigned counsel, in response to Illinois EPA's Motion to Strike and pursuant to Section 101.500( c) of the Board's Procedural Rules (35 Ill. Adm. Code § 100.500( c)), states as follows:

1. On November 24, 2020, Petitioner filed its motion for summary judgment, accompanied by eight exhibits, all of which Petitioner asked the Board to take official notice pursuant to 35 Ill. Adm. Code § 101.630(a).
2. All eight exhibits are documents provided by governments on their website, seven of them are Agency documents (Ex. A - Ex. G), and five of them were expressly referenced and incorporated in the corrective action plan under review here (Ex. B - Ex. F).
3. On December 7, 2020, Respondent filed Illinois EPA's Motion to Strike these exhibits.
4. Respondent makes no objection as to whether these documents are proper subjects for official notice, and indeed, seems to recognize that most documents are admitted at hearing and allow for the Board to determine their relevance in post-hearing briefs. (Mot. at p.2)
5. The Board has previously taken official notice of documents that were not

introduced at hearing. E.g., PAK-AGS v. IEPA, PCB 2015-14, slip op. at 2-3 (Dec. 4, 2014) (admitting several documents attached to post-hearing reply brief); see also People v. Young, 355 Ill. App. 3d 317, 321 (2nd Dist. 2005) (taking judicial notice from government website for the first time on appeal). The only procedural expectation is that the parties be given notice and an opportunity to object to the taking of official notice. (35 Ill. Adm. Code § 101.630(b)) This opportunity is afforded here through the Motion to Strike, which fails to identify any basis that the documents are not suitable for official notice, but seems to indicate a different procedural is preferable or confuses the motion for summary judgment with a motion to supplement the record.

6. The Agency complains that it has not had the opportunity to cross-examine these documents. There is no opportunity to cross-examine documents, they do not respond to questions even under the most rigorous of interrogations. They simply speak for themselves.

7. Furthermore, the Project Manager referenced in the motion created Exhibits A, B, D and F, and he was the addressee in Exhibits C and E. Exhibit G was created by Respondent. If any questions needed to be asked about these exhibits, Respondent is free to ask itself if these documents are what they purport to be. With respect to the final exhibit, courts take judicial notice of consumer price index information from government websites. Pickett v. Sheridan Health Care Ctr., 664 F.3d 632, 648 (7<sup>th</sup> Cir. 2011).

8. Official or judicial notice is a useful way to introduce information quickly and cheaply. Since the information noticed is generally “not subject to reasonable dispute” (Ill. R. Evid. 201(b)), there is no reason or justification for formal adjudication. Information from government websites is not subject to reasonable dispute, though “given that the Internet contains

an unlimited supply of information with varying degrees of reliability, permanence, and accessibility,” an opportunity must be given parties to dispute it if they can. Pickett, 664 F.3d at 648. Respondent has been given an opportunity to dispute whether the exhibits are what they purport to be, whether they are complete and accurate and has not raised any dispute that would prevent their consideration in a motion for summary judgment.

WHEREFORE Petitioner prays for an order denying the motion to strike and for such other relief as the Board deems meet and just.

DERSCH ENERGIES, INC.,  
Petitioner

By its attorneys,  
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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