

**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 LEAVE TO FILE REPLY AND REPLY TO PETITIONER'S RESPONSE TO ILLINOIS EPA'S MOTION FOR SUMMARY JUDGMENT**, 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: February 18, 2021

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

DERSCH ENERGIES, INC.	,)	
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ILLINOIS EPA'S LEAVE TO FILE REPLY

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") procedural rules (35 Ill. Adm. Code 101.500(e)), hereby submits **ILLINOIS EPA'S LEAVE TO FILE REPLY** to the Illinois Pollution Control Board ("Board"). In support of this motion for leave, the Illinois EPA provides as follows.

1. The Illinois EPA filed its Motion for Summary Judgment on January 29, 2021.
2. The Petitioner filed its Response on February 16, 2021. Petitioner served the Respondent on February 12, 2021, a State of Illinois Holiday and the 14th day after the filing of the Illinois EPA's Motion.
3. The issue in this case is important and material prejudice may result if the Illinois EPA is not allowed to reply.
4. The Petitioner's arguments or lack thereof require a response from the Illinois EPA.

For the reasons stated herein, the Illinois EPA hereby respectfully requests that the Hearing Officer allow the Illinois EPA to file a reply to the Petitioner's response to prevent material

prejudice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
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REPLY TO PETITIONER'S RESPONSE TO ILLINOIS EPA'S MOTION FOR SUMMARY

JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and hereby submits its **REPLY TO PETITIONER'S RESPONSE TO ILLINOIS EPA'S MOTION FOR SUMMARY JUDGMENT** to the Illinois Pollution Control Board ("Board").

ARGUMENT

The Petitioner's argument in response to the Agency's Motion for Summary Judgment is that the Agency did not make an argument incorporating the facts and law, which the Agency did, and oh, look at my other pleadings. This is really an insufficient response brief for the Agency to be able to reply to due to its vagueness and therefore, the Agency requests that the Board strike the Petitioner's Response as it denies the Agency any due process.

The Illinois EPA set forth the relevant facts at issue in the case in its motion and the relevant law. The Petitioner failed to submit supporting documentation in order to show

that its submittal did not exceed the minimum requirement of the Act and was therefore not unreasonable. Further, the Agency cited to the proper pages of the Administrative Record where the facts could be found. The Petitioner's only defense in its response is therefore unfounded.

For the Petitioner to then tell the Agency and the Board, that he is not going to bother writing a response, just look back at my other pleadings and figure it out yourselves, is either the height of arrogance or a complete recognition on the Petitioner's part that no matter what he responded that it was fruitless as the Illinois EPA was correct in its decision. Either way, it is not the Illinois EPA's job and certainly not the Board's job to figure out and write the Petitioner's argument on his case for him. For these reasons, the Illinois EPA requests that the Board strike the Petitioner's Response.

CONCLUSION

In regard to Illinois EPA's Motion for Summary Judgement, the facts and the law are clear and in favor of the Illinois EPA. The Petitioner's submittal lacked supporting documentation, was unreasonable, and exceeded the minimum requirements of the Act and regulations. The Petitioner's response to the Illinois EPA's Motion was nonresponsive and should be struck.

WHEREFORE: for the above noted reasons, the Illinois EPA respectfully requests the Board GRANT the Illinois EPA's motion for summary judgment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



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Dated: February, 18, 2021

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on **February 18, 2021**, I served true and correct copies of **ILLINOIS EPA'S LEAVE TO FILE REPLY AND REPLY TO PETITIONER'S RESPONSE TO ILLINOIS EPA'S MOTION FOR SUMMARY JUDGMENT**, 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
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