

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 Leave to File Reply, 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 4th day of March, 2021, and the number of pages in the e-mail transmission are 4.

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 LEAVE TO FILE REPLY**

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)), in opposition to Illinois EPA's Motion for Leave to File Reply, states as follows:

1. The Illinois EPA filed its motion for summary judgment herein, to which Petitioner has filed a timely response in opposition.
2. The Illinois EPA has now filed a motion for leave to file a reply pursuant to Section 100.500(e) of the Board's procedural rules. (35 Ill. Adm. Code § 100.500(e))
3. A reply is not allowed as a matter of right, but will be permitted in order to prevent material prejudice. (35 Ill. Adm. Code § 100.500(e))
4. The Illinois EPA claims that a reply is required due to "Petitioner's arguments or lack thereof." (Illinois EPA's Motion, ¶ 2) The Reply in turn claims that Petitioner's response is "insufficient . . . to be able to reply to due to its vagueness," and requests the response be stricken "as it denies the Agency any due process." (Proposed Reply, at p. 4)
5. The Illinois EPA has no due process rights at issue here. The Board's procedural rules do not require a reply. Instead, the movant is expected to meet the burden of proof and

persuasion in the initial motion without relying upon replies and surreplies for support. If Petitioner's response is lacking in content as claimed here, then no reply is justified.

6. Furthermore, the issues on appeal are not framed by the briefs before the Board, but by the Agency decision letter. Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (Dec. 15, 2016). The Agency decision letter herein identified twelve separate budget cuts over the course of six single-spaced pages. (R.003 - R.008) Pending before the Board is Petitioner's motion for summary judgment which individually addresses each item listed in the Agency decision letter over the course of over thirty-six pages. The Illinois EPA's motion for summary judgment was less than six pages long, containing little if anything that could not be found in the Agency decision letter. Accordingly, it was entirely appropriate for Petitioner to incorporate its prior briefing and avoid redundant and multitudinous filings.

7. Finally, since Petitioner's Motion for Summary Judgment was filed first it is certainly within the Board's prerogative to review said motion first or contemporaneously, and to the extent Petitioner's Motion for Summary Judgment may be granted, the Illinois EPA's Motion for Summary Judgment would be moot to such extent as well.

WHEREFORE, Petitioner, DERSCH ENERGIES, INC., prays that the Board deny the Illinois EPA's Leave to File Reply, and alternatively, if leave is granted, then deny the Illinois EPA's motion to strike Petitioner's Response, and alternatively, if Petitioner's Response is stricken, give leave to Petitioner to file an amended Response, and grant 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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