

ILLINOIS POLLUTION CONTROL BOARD

Blake Leasing Company, LLC – Real Estate Series,)
as owner of Kirkland Quick Stop,)
)
Petitioner,) PCB No. 16-100
) (Water Well Setback Exception)
v.)
)
Illinois Environmental Protection Agency and)
Village of Kirkland,)
)
Respondents.)

NOTICE OF FILING

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on July 19, 2016, Blake Leasing Company, LLC – Real Estate Series filed with the Illinois Pollution Control Board, **Petitioner's Emergency Motion for Extension of Time to Respond to Illinois Environmental Protection Agency's Comments and to Strike Decision Date**, a copy of which is attached and served upon you.

Dated: July 19, 2016

Respectfully submitted,

On behalf of Blake Leasing Company, LLC –
Real Estate Series

/s/Charles F. Helsten
Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900
chelsten@hinshawlaw.com

CERTIFICATE OF SERVICE

I, Charles F. Helsten, an attorney, certify that I have served the attached **Petitioner's Emergency Motion for Extension of Time to Respond to Illinois Environmental Protection Agency's Comments and to Strike Decision Date** on the named parties below by UPS delivery and email, by 5:00 p.m. on July 19, 2016.

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Village of Kirkland
Attn: Mayor Les Bellah
511 W. Main Street
Kirkland, Illinois 60146
Mayor_bellah@mchsi.com

Brad Halloran
Hearing Officer
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
Brad.Halloran@Illinois.Gov

Joanne M. Olson
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
Joanne.Olson@Illinois.Gov

John Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601
John.Therriault@Illinois.Gov

/s/Charles F. Helsten

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**PETITIONER'S EMERGENCY MOTION FOR EXTENSION OF TIME TO REPLY TO
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS AND
TO STRIKE DECISION DATE**

NOW COMES Petitioner, Blake Leasing Company, LLC – Real Estate Series as owner of Kirkland Quick Stop, by and through its attorneys, Hinshaw & Culbertson, LLP, and pursuant to 35 Ill. Adm. Code 101.522, and for its Emergency Motion for Extension of Time to Reply to the Illinois Environmental Protection Agency's Comments and to Strike Decision Date, files this Motion directed to this Honorable Board, and states as follows:

1. On April 29, 2016, Blake Leasing Company, LLC – Real Estate Series as owner of Kirkland Quick Stop ("Petitioner"), filed its Petition with the Illinois Pollution Control Board ("Board") requesting an exception to the minimum setback zone for two community wells owned and operated by the Village of Kirkland.

2. On June 15, 2016, the Illinois Environmental Protection Agency ("Agency") filed its Response to Petitioner's Petition. Within the Agency's Response, the Agency requested certain clarifications and additional documentation for the Board's review prior to a decision being made.

3. On July 19, 2016, a status hearing was held before Hearing Officer Bradley P. Halloran. During the status hearing, and for the first time, Petitioner's Counsel was informed of

a potential missed deadline within which Petitioner was to reply to the Agency's requests for clarification and/or additional documentation. Additionally, Petitioner's Counsel, for the first time, was further informed that this matter has now been scheduled for a July 21, 2016 decision by the Board.

4. Petitioner's Counsel has reviewed the prior orders issued by both the Hearing Officer and the Board. In reviewing the prior orders, Petitioner's Counsel is unaware of a prior imposed deadline within which to reply to the Agency's concerns raised in its Response. To the extent a deadline was imposed, (which again, Petitioner has been unable to locate), any failure to comply with the same was unintentional, and not done in bad faith.

5. Rather, Petitioner was, and currently is, in the process of preparing a reply to the Agency's Response. Given the specificity of the clarifications and further documentation requested by the Agency, Petitioner has been required to obtain an additional hydrologist expert to adequately reply to the Agency's concerns. The need to obtain this additional expert, and for the same to compile the necessary data to reply to the Agency, has taken a considerable amount of time, said amount of time being more than the Petitioner originally contemplated. Had Petitioner known that a reply deadline was approaching, or that this matter would be promptly set for a decision, Petitioner would have previously filed an appropriate motion requesting additional time. Without knowledge of a pending deadline, Petitioner was merely working with its expert to gather the data to sufficiently reply.

6. Pursuant to 35 Ill. Adm. Code. 101.522, the Board, or the Hearing Officer, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period. 35 Ill. Adm. Code 101.522. This extension may be granted either before or after the expiration of the required time period. *Id.*

7. Because Petitioner is actively engaged in gathering the data necessary to reply to the Agency's Response, and concerns raised therein, Petitioner is acting diligently in moving this case forward. Further, this motion is not brought in bad faith and is not intended to unnecessarily delay this proceeding nor cause prejudice to any party. This motion was also filed promptly upon learning of the missed deadline and the scheduled decision date.

8. In light of the foregoing, and due to the extensive requests by the Agency, Petitioner respectfully requests that it be granted an extension of three (3) weeks within which to reply to the Agency's Response.

9. Further, in light of this reasonable request for an extension of time, Petitioner also requests that the Board's decision date, currently scheduled for July 21, 2016, be stricken. Petitioner requests that a new decision date be set for a time after Petitioner files its reply to the Agency's Response. Petitioner has not previously requested that a decision date be stricken.

10. Finally, Petitioner will suffer material prejudice if this reasonable extension is not granted, and the decision date not be stricken and rescheduled. Petitioner will be prevented the opportunity from adequately replying to the Agency's concerns and, as such, the record before the Board will be incomplete. Many of the Agency's concerns will be unaddressed, with the Board not having all of the data otherwise available to it in order to make an informed decision. Petitioner should be given the opportunity to reply to the Agency so that Board is fully informed of the matter and has all of the necessary facts for its consideration.

11. Attached hereto as Exhibit A is the Affidavit of Charles Helsten in support of the facts set forth herein.

WHEREFORE, Petitioner, Blake Leasing Company, LLC – Real Estate Series as owner of Kirkland Quick Stop, respectfully requests that this Honorable Board grant Petitioner an

extension of time to respond to the Illinois Environmental Protection Agency's Comments, said extension being three (3) weeks, plus strike the currently scheduled July 21, 2016 decision date, plus enter such other and further relief in favor of Petitioner as this Hearing Officer deems just and proper.

Dated: July 19, 2016

Respectfully submitted,

On behalf of Blake Leasing Company, LLC –
Real Estate Series

/s/ Charles F. Helsten

Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
HINSHAW & CULBERTSON LLP
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P.O. Box 1389
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chelsten@hinshawlaw.com

CERTIFICATE OF SERVICE

I, Charles F. Helsten, an attorney, certify that I have served the attached **Petitioner's Emergency Motion for Extension of Time to Respond to Illinois Environmental Protection Agency's Comments and to Strike Decision Date** on the named parties below by UPS delivery and email, by 5:00 p.m. on July 19, 2016.

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Village of Kirkland
Attn: Mayor Les Bellah
511 W. Main Street
Kirkland, Illinois 60146
Mayor_bellah@mchsi.com

Brad Halloran
Hearing Officer
James R. Thompson Center
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Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601
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/s/Charles F. Helsten

ILLINOIS POLLUTION CONTROL BOARD

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Petitioner,)	PCB No. 16-100
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Illinois Environmental Protection Agency and Village of)	
Kirkland,)	
)	
Respondents.)	

**AFFIDAVIT OF CHARLES HELSTEN IN SUPPORT OF PETITIONER'S EMERGENCY
MOTION FOR EXTENSION OF TIME AND TO
STRIKE DECISION DATE**

STATE OF ILLINOIS)	
)	SS
COUNTY OF WINEBAGO:)	

I, Charles Helsten, after first being duly sworn upon oath, state as follows:

1. The statements contained herein are based upon my personal knowledge.
2. I am a duly licensed attorney in the State of Illinois, and am the attorney of record for Petitioner, Blake Leasing Company, LLC – Real Estate Series as owner of Kirkland Quick Stop.
3. On April 29, 2016, Petitioner filed its petition with the Illinois Pollution Control Board ("Board") requesting an exception to the minimum setback zone for two community wells owned and operated by the Village of Kirkland.
4. On June 15, 2016, the Illinois Environmental Protection Agency ("Agency") filed its Response to Petitioner's petition. Within the Agency's Response, the Agency requested certain clarifications and additional documentation for the Board's review prior to a decision being made.
5. On July 19, 2016, a status hearing was held before Hearing Officer Bradley P. Halloran. During the status hearing, and for the first time, I was informed of a potential missed deadline within which Petitioner was to reply to the Agency's requests for clarification and/or additional documentation. Additionally, I, for the first time, was further informed that this matter has now been scheduled for a July 21, 2016 decision by the Board.



6. I have reviewed the prior orders issued by both the Hearing Officer and the Board. In reviewing the prior orders, I am not aware of a prior imposed deadline within which to reply to the Agency's concerns raised in its Response. To the extent a deadline was imposed, which I have not found, any failure to comply with the same was unintentional and not done in bad faith.

7. Rather, Petitioner was, and currently is, in the process of preparing a Reply to the Agency's Response. Given the specificity of the clarifications and further documentation requested by the Agency, Petitioner has been required to obtain an additional hydrologist expert to adequately reply to the Agency's concerns. The need to obtain this additional expert, and for the same to compile the necessary data to reply to the Agency, has taken a considerable amount of time, that amount of time being more than the Petitioner originally contemplated. Had Petitioner known that a reply deadline was approaching, or that this matter would be promptly set for a decision, I would have previously filed an appropriate motion requesting additional time. Without knowledge of a pending deadline, Petitioner was merely working with its expert to gather the data to sufficiently reply.

8. 35 Ill. Adm. Code. 101.522, states that the Board, or the Hearing Officer, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period. 35 Ill. Adm. Code 101.522. This extension may be granted either before or after the expiration of required time period. *Id.*

9. Because Petitioner is actively engaged in gather the data necessary to reply to the Agency's Response, and concerns raised therein, Petitioner is acting diligently in moving this case forward. Further, Petitioner's motion is not brought in bad faith and is not intended to unnecessarily delay this proceeding nor cause prejudice to any party. I filed Petitioner's motion promptly upon learning of the missed deadline and the scheduled decision date.

10. In light of the foregoing, and due to the extensive requests by the Agency, I respectfully request that Petitioner be granted an extension of three (3) weeks within which to reply to the Agency's Response, and the issues raised therein.

11. Further, in light of this reasonable request for an extension of time, I also respectfully request that the Board's decision date, currently scheduled for July 21, 2016, be stricken. I further respectfully request that a new decision date be set for a time after Petitioner files its reply to the Agency's Response. Petitioner has not previously requested that a decision date be stricken.

12. Finally, Petitioner will suffer material prejudice if this reasonable extension is not granted, and the decision date not be stricken and rescheduled. Petitioner will be prevented the opportunity from adequately replying to the Agency's concerns and, as such, the record before the Board will be incomplete. Many of the Agency's concerns will be unaddressed, with the Board not having all of the data otherwise available to it in order to make an informed decision. Petitioner should be given the opportunity to reply to the Agency so that Board is fully informed of the matter and has all of the necessary facts for its consideration.

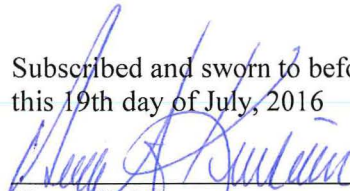
FURTHER AFFIANT SAYETH NOT

Dated: July 19, 2016



Attorney for Petitioner

Subscribed and sworn to before me
this 19th day of July, 2016



Notary Public

