

ILLINOIS POLLUTION CONTROL BOARD
August 11, 2016

BLAKE LEASING COMPANY, LLC,)
)
 Petitioner,)
)
 v.) PCB 16-100
) (Water Well Setback Exception)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and VILLAGE OF)
KIRKLAND,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

Blake Leasing Company, LLC (Blake) seeks an exception from the water well setback requirement in Section 14.2 of the Environmental Protection Act for its gas station in Kirkland, DeKalb County. See 415 ILCS 5/14.2 (2014). Blake seeks the exception to allow remediation of groundwater contamination within the setback zone of Kirkland’s potable water supply wells. Blake supplemented its petition with responses to the Board’s questions (Resp.) on May, 25, 2016. The Illinois Environmental Protection Agency (IEPA) filed its response, recommending that the Board deny Blake’s petition on June 15, 2016. Blake did not file a reply within 14 days of the IEPA’s response. See 35 Ill. Adm. Code 106.306. However, on July 19, 2016, Blake filed an emergency motion for extension of time and to strike decision date. IEPA responded on July 20, 2016 with no objection to petitioner’s motion. The Board does not rule on Blake’s motion, but instead directs Blake to file an amended petition.

When a new potential route of contamination is created near a permitted community water supply well or other potable water supply well, the Environmental Protection Act (Act) requires a minimum setback distance from the potable water well to the new potential route. See 415 ILCS 5/14.2 (2014). Section 14.2(c) of the Act and Section 106.Subpart C of the Board’s regulations provide an exception to the minimum setback requirement. 415 ILCS 5/14.2(c) (2014); 35 Ill. Adm. Code 106.SubpartC. Under Section 106.310 of the Board’s procedural rules, the burden of proof is on the petitioner to demonstrate four things:

- (1) Compliance with the setback requirements of Section 14.2 . . . of the Act would pose an arbitrary and unreasonable hardship;
- (2) The petitioner will utilize the best available control technology economically achievable to minimize the likelihood of contamination of the potable water supply well;
- (3) The maximum feasible alternative setback will be utilized; and
- (4) The location of the potential route will not constitute a significant hazard to the potable water supply well. 35 Ill. Adm. Code 106.310; *see also* 415 ILCS 5/14.2 (2014).

Blake's petition does not adequately address the four elements of Section 106.310.

The Petition Does Not Describe Why Blake Faces an Arbitrary and Unreasonable Hardship

In the March 21, 2016 petition (Pet.), Blake argues that “[t]he allowed setback requirements of Section 14.2 of the Act pose an arbitrary and unreasonable hardship . . . as generally, the use of enhanced bioremediation injection wells located within a protected minimum setback zone established for potable water supply wells per Section 14.2 of the Act is prohibited.” Pet. at 5. There is no other discussion of hardship provided by Blake in the petition. The Board finds this statement to be conclusory and insufficient to address the requirement of 35 Ill. Adm. Code 106.310(a). The Board requires additional information on why compliance poses an arbitrary and unreasonable hardship on Blake.

Blake Does Not Describe Why Enhanced Bioremediation is the Best Available Control Technology for the Kirkland Site

In its petition, Blake labels enhanced bioremediation as the “best available control technology.” Pet at 4. Blake elaborates on this argument in its IEPA-approved Corrective Action Plan (CAP), attached to the petition as Exhibit A. In the CAP, Blake states that “[i]n-situ enhanced bioremediation was chosen as the recommended option since it has been successful at other sites.” Pet. Exhibit A at 8.

The Board notes IEPA's endorsement of Blake's enhanced bioremediation for the Kirkland site in the approved CAP. Pet. Exhibit A. However, the standard that the IEPA must use when approving a CAP plan for remediation under Section 731.166 of the Board's regulations is different from the burden of proof that the Board must follow when granting an exception under Section 14.2(c) of the Act. 35 Ill. Adm. Code 731.166; 415 ILCS 5/14.2(c) (2014). The Board finds that Blake has not described why enhanced bioremediation is effective, let alone the best available control technology to minimize the likelihood of contamination at the Kirkland site, as required by 35 Ill. Adm. Code 106.310(b).

Blake is Unclear About the Maximum Feasible Alternative Setback

In the Board's April 27, 2016 questions to Blake (Bd. Ques.), the Board asked Blake to clarify the maximum alternative setback proposed by Blake for all Village of Kirkland community water supply wells. Bd. Ques. at 5. Blake submitted that the proposed maximum setbacks would be 400 feet for the Kirkland emergency supply well and 600 feet for the community water supply wells. Resp. at 6. This information conflicts with Blake's Figure 5 that shows an off-site remediation injection well as close as 50 feet from the emergency supply well. Resp. Figure 5. The location of the main CWS Well 11425 remains unclear. With this potential 350 foot discrepancy between what Blake states in the petition versus what Blake shows in its figures supporting the petition, the Board finds that Blake has not clearly stated the proposed maximum feasible alternative setback for the relevant CWS wells. The Board directs Blake to address this discrepancy, in compliance with 35 Ill. Adm. Code 106.310(c).

Blake Does Not Adequately Describe Why No Significant Hazard to the Water Supply Will Result

Blake's filings inadequately evaluate the risk to the Village of Kirkland's potable water supply wells. The Board finds that a complete picture of the regulatory relief needed by Blake, along with a comprehensive account of the potential routes of contamination that currently exist, would allow for a more thorough and protective review of the risk to the Village of Kirkland potable water wells.

The Board also questions Blake's conclusion that off-site "monitoring wells MW-30S and MW-30D appear to be side-gradient of the site. Therefore, contaminants (total lead and PNAs) detected at those wells appear to be from a different source area." Pet. Exhibit A at 6. Remediation of offsite monitoring wells MW-30S and MW-30D is not included in Blake's petition. However, the CAP submitted with Blake's petition indicates contamination in MW-30S and MW-30D. Pet. Exhibit A at 10. Subsequently, in response to the Board's questions, Blake submitted a document containing conflicting information regarding the contamination in these wells. Resp. Figure 5. Blake's petition is unclear as to whether wells MW-30S and MW-30D have been influenced by on-site activity. The Board directs Blake to clearly demonstrate why the location of the potential route will not constitute a significant hazard to the potable water supply well, as required by 35 Ill. Adm. Code 106.310(d).

An Amended Petition is Necessary

Based on Blake's petition and its response to Board questions, the Board directs Blake to file an amended petition. Blake has stated that it intends to respond to the IEPA's concerns in its next filing. Resp. at 3. The Board encourages Blake to address IEPA's concerns along with the Board's concerns in the amended petition, consistent with Sections 106.304 and 106.310 of the Board's procedural rules. 35 Ill. Adm. Code 106.304, 106.310. The amended petition must be independent of the March 21, 2016 petition without cross-reference to that document in order to aid the Board in its consideration of Blake's request for relief. An amended petition will restart the regulatory timeline set out in 35 Ill. Adm. Code 106.306, and trigger the requirements of Subpart C of Part 106 of the Board's rules. 35 Ill. Adm. Code 106.Subpart C. Blake may also seek a stay in this case in order to allow time for it to compose an amended petition. *See* 35 Ill. Adm. Code 101.514. The Board will not rule on Blake's motion for extension of time and to strike decision date—those motions are mooted by today's order.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 11, 2016 by a vote of 4-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board