

**ILLINOIS POLLUTION CONTROL BOARD**

Blake Leasing Company, LLC – Real Estate Series, )  
as owner of Kirkland Quick Stop, )  
 )  
Petitioner, )  
 ) PCB No. 2018-26  
v. )  
 )  
Illinois Environmental Protection Agency, Village )  
of Kirkland, Illinois and Soo Line Railroad )  
Company (d/b/a Canadian Pacific Railway and )  
Canadian Pacific), )  
 )  
Respondents. )

**STATUS REPORT**

NOW COMES the Petitioner, Blake Leasing Company, LLC – Real Estate Series, as owner of Kirkland Quick Stop (the “KQS”), by and through its attorneys, Hinshaw & Culbertson, LLP, and pursuant to Hearing Officer Brad Halloran’s Order of May 3, 2018, provides the following status report.

1. As previously indicated, the Petitioner and the Village of Kirkland (the “Village”) have entered into an Agreement for development of a new alternate community water supply well. (A copy of that Agreement is marked Exhibit A and attached hereto and incorporated herein by this reference).

2. As of the present date, the parties are moving forward consistent with certain milestone dates set forth in that Agreement.

3. In addition, the Petitioner and the Village are discussing other potential safeguards/controls to be implemented to meet both the spirit and intent of Section 14.2 of the Illinois Environmental Protection Act, as well as to allow this Honorable Board to devote its attention and resources to other matters that cannot be resolved short of formal adjudication.

Dated: May 4, 2018

Respectfully submitted,

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

/s/ Charles F. Helsten

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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](mailto:chelsten@hinshawlaw.com)

**CERTIFICATE OF SERVICE**

I, Charles F. Helsten, an attorney, certify that I have served the attached **Status Report** on the named parties below by via email and certified mail, return receipt requested, by 5:00 p.m. on May 4, 2018.

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](mailto:Joanne.Olson@Illinois.Gov)

Brad Halloran  
Hearing Officer  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
[Brad.Halloran@Illinois.Gov](mailto:Brad.Halloran@Illinois.Gov)

Don Brown, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601  
[Don.Brown@Illinois.Gov](mailto:Don.Brown@Illinois.Gov)

Village of Kirkland  
Attn: Ryan Block, Village President  
511 W. Main Street  
Kirkland, Illinois 60146  
[Ryanblock.kirkland@gmail.com](mailto:Ryanblock.kirkland@gmail.com)

Bradford S. Stewart  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014  
[bstewart@zrfmlaw.com](mailto:bstewart@zrfmlaw.com)

CT Corporation System, Registered Agent  
Soo Line Railroad Company  
208 South LaSalle Street, Suite 814  
Chicago, IL 60604  
(Via Certified Mail Only)

/s/Charles F. Helsten

**AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into and made effective the 2<sup>ND</sup> day of APRIL, 2018, (the "Effective Date") by and between BLAKE LEASING COMPANY LLC - REAL ESTATE SERIES, as Owner of the Kirkland (Illinois) Quick Stop ("Blake") and the VILLAGE OF KIRKLAND, an Illinois unit of local government ("Village").

**RECITALS**

Blake Leasing Company, LLC-Real Estate Series is the Owner of the Kirkland Quick-Stop (the "KQS") gas station facility located at 411 West Main Street, Kirkland, DeKalb County, Illinois 60146 (the "Facility").

Currently, the Village of Kirkland has three (3) "community water supply" wells as defined by Section 3.145 and Section 14 of the Illinois Environmental Protection Act (the "Act"). Well No. 1 (IEPA #11424) is designated as the Village's emergency backup well. Well No. 1 is located at 75 feet East of the Facility, and thus lies within the statutory setback zone provided for in Section 14 of the Illinois Environmental Protection Act (the "Act") for "community water supply" wells of this type.

Consequently, on November 7, 2017, Blake filed its Petition (the "Petition") with the Illinois Pollution Control Board (the "IPCB"), requesting a community water well setback exception pursuant to Section 14.2 of the Act concerning the operation of an underground storage tank (UST) system now in existence/operation at the KQS site which is within the statutory setback zone of Village emergency backup Well No. 1.

Since the filing of this Petition, the Village has communicated its desire to terminate Well No. 1's designation as a "community supply well" with the Illinois Environmental Protection Agency, whereby that Well is currently permitted as a "community water supply" well under Section 14 of the Act.

As set forth in greater detail below, Blake is receptive to the Village's intention to terminate its designation of Well No. 1 as a "community water supply" well under Section 14 of the Act, and, as also set forth in greater detail herein below, is willing to assist the Village in that regard, as doing so is beneficial to Blake's interests.

**Agreement**

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Within fourteen (14) days after the Effective Date of this Agreement, the Village of Kirkland shall initiate the process to terminate its designation of Well No. 1 as a "community water supply" well pursuant to Section 14 of the Act and corresponding regulations, and as required by the Illinois Environmental Protection Agency in accord with such statutory provisions and regulations.



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2. Consideration for Agreement. Blake acknowledges that it will receive benefit as a result of the termination of the "community water supply" well designation which now exists with respect to Well No. 1. Further, Blake acknowledges that in reliance on and performance of various covenants, promises and representations contained in this Agreement, the Village will incur certain costs and expenses in connection with termination of the Village's "community water supply" well designation which currently exists with respect to Well No. 1. Blake further recognizes that the Village may desire to develop a new "community water supply" well at a different location and in order to financially assist the Village in these endeavors, Blake agrees to pay the Village the sum of \$100,000.00 upon IEPA approving the termination of "community water supply" well status/designation for Well No. 1.

The \$100,000.00 shall be paid within fourteen (14) days of: (1) the Village's receipt of the IEPA's approval of termination of Well No. 1 as a "community water supply" of the Village and (2) a consequent determination by IEPA or the IPCB (as appropriate) that a setback exception requested in Blake's pending Petition is no longer necessary. Blake shall provide to the Village a Letter of Credit in the amount of \$100,000.00, prior to Blake's execution of this Agreement. Subject only to the two conditions precedent to payment set forth immediately above, the Letter of Credit shall be a clean unconditional and irrevocable standby letter of credit in favor of the Village as beneficiary, issued for direct payment by a federally insured financial institution, and which Letter of Credit shall provide that the issuing financial institution will pay to the Village amounts in aggregate up to \$100,000.00, upon presentation by the Village that Blake has not fulfilled its duty to pay under this Agreement. The Letter of Credit shall not have an expiration less than one (1) year, although it may be released by Village sooner, upon Blake's request, if the full sum owed to the Village under this Agreement has been received by the Village in certified funds.

3. Permanent Delisting of Well No. 1 as a Community Water Supply Well Pursuant to Section 14 of the Act. The parties hereby acknowledge that it is their mutual express intention that Well No. 1 not be considered used, and/or designated as a "community water supply" well pursuant to Section 3.145 and Section 14 of the Act going forward, and that upon the termination of Well No. 1's current designation as the "community water supply" well, the Village shall not in the future attempt to re-designate and/or re-permit Well No. 1 as a "community water supply" well pursuant to Section 14 of the Act for so long as the law allows and so long as the existence/operation of the KQS Facility would require the granting of a water well setback exception pursuant to Section 14 of the Act. Moreover, the Village Agrees that going forward, to the extent that the Village continues to use Well No. 1 for other purposes, the Village will not use that Well and/or designate that Well for the purpose of furnishing potable water for drinking or general domestic use as provided for and defined by Section 3.365 of the Act. Nothing herein is intended to limit the use of Well No. 1 for any other lawful purpose.

4. Termination. Blake may terminate this Agreement by written notice to the Village in its sole discretion if the Illinois Environmental Protection Agency does not grant approval of termination of the current designation of Well No. 1 as a "community water supply" well within 180 days of the Effective Date, so long as Blake's failure to cooperate is not the reason for the failure to obtain the approval to terminate the designation. In the event Blake delivers such notice of termination, this Agreement shall become null and void in its entirety.
  
5. Village Indemnity and Blake's Right to Recoupment of Sums Paid. The Village covenants and agrees that if it attempts in the future to designate (or does designate) Well No. 1 as a "community water supply" well as defined by Section 3.145 and Section 14 of the Act once its current designation is terminated, and the Village otherwise thereafter designates Well No. 1 and/or uses Well No. 1 for the purpose of furnishing potable water for drinking or general domestic use, the Village shall be solely responsible for all liabilities, damages, claims, and demands of any type, kind or sort which may arise as a result of such subsequent designation and use of Well No. 1 as a "public water supply" source as defined by Section 3.365 of the Act, and agrees to indemnify and hold harmless Blake from and against any such losses or damages, which arise and are recoverable against Blake as a result of the Village's subsequent designation or use of Well No. 1 as a "public water supply" source as defined by Section 3.365 of the Act. The Village also releases Blake from any claims relating to termination of the use of Well No. 1 for potable "community water supply" uses going forward.

In addition, if after Well No. 1's "community water supply" designation has been terminated by the IEPA, if the Village attempts to re-designate or does fact re-designate Well No. 1 as a "community water supply" well as defined by Section 3.145 and Section 14 of the Act or otherwise designates and/or uses Well No. 1 for the purpose of furnishing potable water for drinking or general domestic use, Blake shall be entitled to recoupment of \$75,000.00 of the amount previously tendered to the Village as consideration for this Agreement pursuant to Section 2 above, as and for liquidated damages, the parties hereby recognizing and acknowledging that the damages Blake may ultimately incur are difficult to estimate on the Effective Date of the Agreement, and said recoupment/repayment amount is a fair and reasonable compensation figure, and not a penalty.

Nothing in this Agreement is intended to, nor shall it, provide a duty, cause of action or right to indemnity against the Village for its failure to obtain IEPA approval to terminate the "community water supply" designation of Well No. 1, and/or against the Village for any costs, liabilities, or expenses incurred should it not obtain IEPA approval to terminate the designation of Well No. 1, and/or against the Village for any actual or alleged costs, expenses, penalties and/or damages arising out of the actions or omissions of Blake, whether prior to or subsequent to the execution of this Agreement, Blake agrees to indemnify and hold harmless the Village from and against any losses or damages which arise and are recoverable against the Village as a result of Blake's actions or omissions in

relation to the UST system and/or use of the KQS facility, unless otherwise specified in this Agreement.

6. Ordinance Prohibiting Use of Well No. 1 as a Community Water Supply/Public Water Supply Source. The Village will use its best efforts to enact an Ordinance prohibiting the future designation and/or use of Well No. 1 as a "community water supply" well as defined by Section 3.145 of the Act or a "public water supply" source as defined by Section 3.365 of the Act. Nothing herein is intended to limit or control what decision(s) the duly elected officials of the Village may take in their lawful capacity.

7. Representations and Warranties.

a. The Village. The Village represents and warrants to Blake that:

- i. The Village has the right, power and authority to enter into this Agreement, as well as the right and authority to pursue all terms and conditions and honor all covenants, promises and representations set forth in this Agreement;
- ii. That the execution of the Agreement and the consummation of all transactions, duties, promises and obligations made incumbent herein upon the Village having been duly and validly authorized by all necessary actions on the part of the Village, and that this Agreement constitutes a valid and legally binding obligation and commitment of the Village, enforceable in accordance with its terms and applicable law; and

b. Blake. Blake represents and warrants to the Village that:

- i. Blake has the right, power and authority to enter into the Agreement, and the right, power and authority to perform the terms and conditions of this Agreement; and
- ii. That the execution of the Agreement and the consummation of all transactions, duties, promises and obligations made incumbent herein upon Blake having been duly and validly authorized by all necessary actions on the part of Blake, and that this Agreement constitutes a valid and legally binding obligation and commitment of Blake, enforceable in accordance with its terms and applicable law.

8. Cooperation Clause. Blake covenants and agrees to cooperate reasonably with the Village in the Village's effort to reach an agreement with the Illinois Environmental Protection Agency on the form, substance and content of termination of the "community water supply" source designation currently held by Well No. 1.

9. Except as expressly provided in Section 7 herein, neither Blake nor the Village (or any of their employees, agents or representatives) had made any verbal or written representations, warranties, promises or guaranties whatsoever to each other, whether express or implied, and neither party has relied upon any such representations, warranties, promises and guaranties or upon statements made by one to the other (other than the representations and warranties contained in Section 7), and each has entered into this Agreement after having made and relied solely on its own independent investigation, examination and evaluation of the facts and circumstances involved herein.
10. Notice. Any notice required by this Agreement shall be in writing, and: (1) delivered by facsimile or email (provided that such transmission is also sent by at least one of the additional methods set forth below); or (2) delivered personally, or (3) sent postage pre-paid by certified mail, return receipt requested or (4) sent by a nationally-recognized overnight courier that guarantees next day delivery, directed to the other party at the address set forth in this Section, or such other parties or addresses as may be designated by either Blake or the Village from time to time in accordance with this Section.

To Blake:

Mr. John Blake  
Blake Leasing Company, LLC - Real Estate Series  
Owner of Kirkland Quick Stop  
6807 Rote Road  
Rockford, IL 61107  
[Johnblake1948@gmail.com](mailto:Johnblake1948@gmail.com)

With a Copy to:

Charles F. Helsten  
Hinshaw & Culbertson LLP  
100 Park Avenue  
Rockford, IL 61101  
[chelsten@hinshawlaw.com](mailto:chelsten@hinshawlaw.com)

To Village:

Village of Kirkland  
Attn: Ryan Block, Village President  
511 W. Main Street  
Kirkland, Illinois 60146  
[ryanblock.kirkland@gmail.com](mailto:ryanblock.kirkland@gmail.com)



With a copy to:

Bradford S. Stewart  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014  
[bstewart@zrfmlaw.com](mailto:bstewart@zrfmlaw.com)

Notice delivered pursuant to Subsection (1) of this paragraph shall be deemed received upon transmission of the facsimile or email, as applicable. Notice delivered pursuant to Subsection (2) of this paragraph shall be deemed received upon completion of personal delivery, notice given pursuant to Subsections (3) and (4) of this Section shall be deemed delivered when placed in the hands of the appropriate courier for delivery to the recipient.

11. Benefit and Binding Effect. This Agreement shall be binding upon and inert to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.
12. Time is of the Essence. Time is of the essence with respect to all dates, deadlines and obligations set forth in this Agreement. If any date for performance under this Agreement falls on a weekend or a nationally-recognized holiday, the date for performance shall automatically be deemed to extend to the next business day.
13. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any dispute arising out of or related to this Agreement between the parties shall be heard exclusively in the Circuit Court of DeKalb County, Illinois, to the full extent possible.
14. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters to which it pertains, and may be amended only by written agreement signed by both Blake and the Village. Neither party has relied upon any statement or representation not set forth in this Agreement.
15. Heading/Drafting. The paragraph headings used herein are for convenience purposes only, and do not constitute matters to be construed in interpreting this Agreement.
16. Savings Clause. If any covenant, clause or portion of this Agreement is deemed unenforceable by statute or by Court decision, then only that portion which is so declared unenforceable shall be unenforceable, and the remainder of this Agreement shall survive in full force and effect.
17. Waiver of Trial by Jury. The parties hereby irrevocably waive their respective rights to a jury trial on any claim or cause of action based upon or arising out of this Agreement. This waiver shall apply to all subsequent amendments, renewals,


supplements or modifications to this Agreement. In the event that litigation arises, this Agreement may be filed as a written consent to trial by the Court.

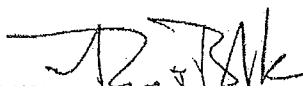
18. Effective Date. This Agreement shall be deemed effective and in full force and effect upon the date of the last execution set forth below.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date of the last execution set forth below.

BLAKE LEASING COMPANY, LLC -  
REAL ESTATE SERIES, as Owner of  
Kirkland Quick Stop

VILLAGE OF KIRKLAND, an Illinois unit  
of local government

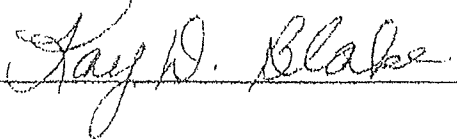
By:   
Its: John Blake, President

By:   
Its: Ryan Block, Village President

Dated: 3/27/2018

Dated: 4/2/2018

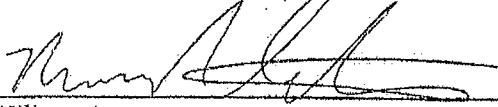
ATTEST:



ATTEST:

  
Village Secretary

APPROVED AS TO FORM:

  
Village Attorney