

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>STANLEY BOYD, et al.</b>	)	
	)	
<b>Complainants,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>AQUA ILLINOIS, INC.</b>	)	<b>PCB No. 25-052</b>
	)	<b>(Enforcement – Public</b>
	)	<b>Water Supply)</b>
	)	
<b>Respondent.</b>	)	

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**NOTICE OF FILING**

**Illinois Pollution Control Board**

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PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **MOTION TO DISMISS** and **CERTIFICATE OF SERVICE**, copies of which are herewith served upon you.

Dated: April 17, 2025

Respectfully submitted,

/s/ Alexander J. Garel-Frantzen  
One of its Attorneys

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Respondent.	)	

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**AQUA ILLINOIS’S MOTION TO DISMISS  
CLASS ACTION COMPLAINT**

Respondent Aqua Illinois, Inc. (“Aqua”), by and through its counsel, ArentFox Schiff, LLP, moves to dismiss Complainants’ Class Action Complaint, filed March 14, 2025 (the “Complaint”). Dismissal is appropriate for multiple independent reasons.

*First*, the Complaint should be dismissed as frivolous because it (1) exclusively seeks relief which is not authorized by the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (the “Act”), (2) asserts three common law tort claims upon which the Board cannot grant relief, (3) fails to sufficiently allege a violation of the Act, as the alleged discharge of contaminants cannot constitute a claim under Section 5/12(a) of the Act as a matter of law, and (4) asserts Section 5/12(a) violations which, if somehow valid, would be barred by the statute of limitations, which began to run, at the very latest, in June 2019.

*Second*, the Complaint should be dismissed as duplicative, in whole or part, of other proceedings that concern the same alleged actions and inactions. Indeed, this action is now the *fifth* cased filed against Aqua regarding the same facts. One of those actions was brought by the People of Illinois and Will County and the remaining four (including this action) were brought

by Complainants' counsel on behalf of University Park residents. The first action by Complainants' counsel was filed in circuit court in 2019, and dismissed by the court on December 20, 2024, because the court found that the claims fell under the exclusive jurisdiction of the Illinois Commerce Commission (the "ICC") rather than an Illinois circuit court.

**Third**, Complainants are barred by the doctrine of res judicata from bringing their claims because an action was brought under the same facts by the People of Illinois and Will County and resulted in a Consent Order entered by the Circuit Court of Will County.

**I. The Complaint Must Be Dismissed as Frivolous.**

The Act and the Board's rules direct the Board to dismiss a complaint if it is "duplicative or frivolous." 415 ILCS 5/31(d)(1); 35 Ill. Admin. Code § 103.212(a). The Board should dismiss the Complaint as frivolous because the Complaint (a) seeks relief (class certification, damages, and attorney's fees/costs) not authorized under the Act, (b) asserts three common law tort claims upon which the Board cannot grant relief, (c) fails to sufficiently allege a violation of the Act, and (d) is barred by the statutes of limitations.

**a. All Relief Sought By the Complaint Is Outside of the Board's Authority.**

A complaint is 'frivolous' if "it asks for 'relief that the Board does not have the authority to grant.'" *Anielle Lipe v. Vill. of Richton Park*, PCB 12-44, 2011 WL 5891395, at \*1 (Nov. 17, 2011) (quoting 35 Ill. Admin. Code § 101.202). The Complaint does precisely that—all relief it seeks (class certification, damages, and attorney's fees/costs) is beyond the Board's authority. Dismissal is therefore warranted. Specifically, each of the Complaint's three counts asks the Board to grant the following relief:

- A. Certify this action as a class action on behalf of the Class defined herein, appoint Complainants as the Class representatives, and appoint Complainants' counsel as counsel for the Class;

- B. Award nominal and punitive damages, and actual damages incurred by Complainants and the Class for all out-of-pocket costs, loss of time, loss of income, injury and fear of future injury, and stress, aggravation, annoyance, inconvenience, and discomfort;
- C. Award Complainants and the Class their attorney's fees and costs of suit, and such other and further relief as the tribunal deems just and proper.

(Complaint ("Compl.") ¶¶ 53, 60, 68.). To the extent the Board interprets the Complaint to also assert claims under Section 5/12(a) of the Act which are independent of its Counts, I, II and III,<sup>1</sup> such claims would, at most, similarly seek only damages. (*Id.* at ¶ 38.)

Both the Act and Board have long been clear that the Board is empowered to grant only three types of relief: civil penalties; orders to cease and desist from violations; and revocation of permits. 415 ILCS 5/33(b); *e.g.*, *Hoffman v. City of Columbia*, PCB 94-146, 1994 WL 259287, at \*2 n.3 (June 2, 1994) ("The Board can grant relief by ordering a Respondent to stop the polluting activity and by imposing a fine. The Board cannot grant monetary compensation for damage done to health or property and it cannot impose criminal sanctions such as a jail term. Thus, any request for monetary compensation or the imposition of criminal sanctions would be considered frivolous." (citation omitted)).

This principle of limited relief availability under the Act has consistently been applied by the Board to reject claims for damages. *See, e.g.*, *Theodore Kosloff Trust v. A&B Wireform Corp.*,

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<sup>1</sup> Aqua reads the Complaint's assertion of Section 5/12(a) violations as predicates to its tort claims rather than as independent claims. This reading of the Complaint is supported by at least three factors. First, the Complaint is clear that water pollution is irrelevant to Complainants' claims. *See, e.g.*, Compl. ¶ 32 ("Aqua's actions and inactions interfered with all Complainants' and Class members' ability to use and consume the drinking water supply on their properties regardless of whether they had an elevated lead test result on their property."); *id.* at ¶ 56(c) (alleging a breach of duty "regardless of whether [Complainants] had an elevated lead test result on their property"); and *id.* at ¶¶ 57, 58 (arguing that ordinary care and foreseeability requirements applied "regardless of whether [Complainants] had an elevated lead test result on their property").) Second, as explained in this Part I.a, the Complaint does not seek any relief that can be granted via a Section 5/12(a) claim. Third, the Complaint does not include a separate count for its Section 5/12(a) assertions.

PCB 06-163, 2006 WL 2956155, at \*1 (Oct. 5, 2006) (“The Board . . . lacks the authority to award damages for diminution in property value.”); *Erickson v. Charleston Classic Homes, Inc.*, PCB 04-26, 2003 WL 22761209, at \*2 (Nov. 6, 2003) (“Though the Board can order her requested cease and desist remedy if a violation is proved, the Board lacks the authority to award damages.”); *Residents of Cedarville v. Vill. of Cedarville*, PCB 91-194, 1992 WL 128279, at \*2 (May 21, 1992) (“[T]he Board does not award damages.”); *Eilrich v. Smith, d/b/a Maywood Shell Car Wash*, PCB 85-4, 1987 WL 124842, at \*3 (Apr. 30, 1987) (“[I]n response to apparent suppositions to the contrary by both parties, the Board notes that it is statutorily incapable of awarding damages to any party in a dispute before it.”); *Cupp v. S. Palos Twp. Sanitary Dist.*, PCB 83-104, 1984 WL 37710, at \*2 (May 29, 1984) (“The Board is empowered to assess civil penalties but it cannot award private damages.”); and *Miller v. U.S. Homes Builders*, PCB 73-487, 1973 WL 5272, at \*1 (Nov. 29, 1973) (“[The] Complaint . . . is dismissed because it prays that the Board assess damages against the respondent. The Board does not have the power to do this . . .”).

The Board also has been clear that it may not award punitive damages, attorney’s fees, or costs of litigation. *See e.g.*, 415 ILCS 5/42 to 5/45 (The Act does not authorize the Board to grant punitive damages); *Dayton Hudson Corp. v. Cardinal Indus., Inc.*, PCB 97-134, 1997 WL 530523, at \*7 (Aug. 21, 1997) (“With regard to attorney fees and costs, we find that the Board generally does not have the discretion under the Act to award attorney fees and costs incurred by citizen complainants. Such costs and fees are allowed by Section 42(f) of the Act only when the Attorney General or a State’s Attorney prevails in an enforcement action on behalf of the People of the State of Illinois.”).

Finally, Aqua is unaware of any case in which the Board has conducted proceedings for a class action complaint or in which the Board certified a class. This is unsurprising for at least three reasons: (1) class actions typically seek to recover types of relief—damages and attorney’s fees—which the Board is not authorized to grant,<sup>2</sup> (2) the Illinois class action statute, 735 ILCS 5/2-801, explicitly allows for class certification “in any *court* of this State” without also authorizing class actions before an ‘independent board’<sup>3</sup> such as the Board, and (3) nothing in the Act authorizes the Board to grant class certification (or nominal, punitive and actual damages, and/or attorney’s fees).<sup>4</sup> That omission from the Act is meaningful. As the Illinois Supreme Court has stated, “[w]here a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions.” *Brigestone/Firestone, Inc. v. Aldridge*, 179 Ill.2d 141, 151-52 (Ill. 1997) (explaining the principle of *expressio unius est exclusio alterius*). The legislature plainly omitted class action certification (and nominal, punitive and actual damages, attorney’s fees, and costs) from the enumerated powers granted to the Board by the Act. Accordingly, the Act does not allow a class certification.<sup>5</sup>

Because all relief requested by Complainants is outside of the Board’s authority, the Complaint should be dismissed as frivolous.

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<sup>2</sup> Aqua respectfully submits that, even were the Board empowered by the Act to certify a class, the absence of an ability to grant the relief sought by the putative class would warrant dismissal regardless.

<sup>3</sup> 415 ILCS 5/5(a).

<sup>4</sup> Nor do the Board rules indicate that 735 ILCS 5/2-801 applies to proceedings before the Board. *See* 35 Ill. Admin. Code § 101.100(b).

<sup>5</sup> This conclusion is supported by the text of Section 5/31(d) of the Act, the very section which gives Complainants the ability to file this action. In relevant part, Section 5/31(d) is clear that complaints to the Board may be maintained by “any person.” It does not state or infer that a complaint could be maintained by an unnamed group of individuals not identified in a complaint.

**b. All Three Counts of the Complaint Are Frivolous Because They State Common Law Claims Upon Which the Board Cannot Grant Relief.**

A complaint also is 'frivolous' if "it 'fails to state a cause of action upon which the Board can grant relief.'" *Anielle Lipe v. Vill. of Richton Park*, PCB 12-44, 2011 WL 5891395, at \*1 (Nov. 17, 2011) (quoting 35 Ill. Admin. Code § 101.202). The Complaint should be dismissed as frivolous because its only counts bring common law tort claims upon which the Board cannot grant relief: Count I asserts a public and private nuisance claim; Count II asserts a negligence claim; and Count III asserts a trespass claim.

The Act unambiguously authorizes the Board to conduct proceedings "on complaints charging violations of th[e] Act, any rule or regulation adopted under th[e] Act, any permit or term or condition of a permit, or any Board order . . . ." 415 ILCS 5/5(d). The Act does not state a grant of authority to hear common law tort claims. Again, that omission is meaningful.

In the absence of statutory language explicitly authorizing the Board to hear common law tort claims, the Board has (unsurprisingly) consistently declined to do so. For instance, in *Andrushko v. Egan*, the Board dismissed a private nuisance claim as frivolous because the authority granted to it under the Act "does not extend to unspecified authorities governing private nuisance" and thus the "alleged violation fail[ed] to state a claim on which it can grant relief." PCB 23-133, 2024 WL 150189, at \*3 (Jan. 4, 2024); *see also Zajac v. Chi. Transit Auth.*, PCB 79-10, 1979 WL 10480, at \*1 (Dec. 13, 1979) ("To the extent . . . the appendix [to the complaint] pleads the Board's jurisdiction over statutory and/or common law nuisance offenses, it is stricken."); *Brogan v. City of Palos Hills*, PCB 79-11, 1980 WL 13245, at \*1 (July 10, 1980) ("A considerable part of the hearing record consists of the discussion of such matters as trespass, easements, fraud and deception, etc. The Board has neither the power nor the inclination to

address these issues as they pertain to this case and shall consider only the issue of environmental harm caused by violation of the Board's Rules.”).

The Complaint should be dismissed as frivolous because its counts exclusively bring common law tort claims upon which the Board is not authorized to grant relief.

**c. To the Extent the Complaint Asserts Independent Claims Under Section 5/12(a) of the Act, those Claims Are Frivolous Because They Fail to Sufficiently Allege a Violation of the Act.**

The Complaint attempts to allege violations of the Act as predicates to each of their torts rather than as independent claims.<sup>6</sup> Aqua thus does not believe it necessary to consider the Section 5/12(a) assertions as independent claims. To the extent the Board disagrees and construes the Complaint to state independent Section 5/12(a) claims, such should be dismissed as insufficient as a matter of law.

Parts V and VII of the Complaint aver (1) Section 5/12(a) “water pollution” violations and that (2) the alleged Section 5/12(a) violations entitle Complainants to damages. (*See* Compl. ¶¶ 8, 15-28 and 38.) Each of Complainants’ averments are wrong; its Section 5/12(a) assertions are deficient as a matter of law and, as explained at Part II.a, *supra*, the Act does not authorize the Board to award damages. The deficiencies of Complainants’ 5/12(a) assertions are three-fold.

First, Complainants’ Section 5/12(a) assertions fail because a discharge into the ‘environment’ is not alleged as a matter of law. As the Board is well aware, a valid claim under Section 5/12(a) of the Act must entail a discharge into the ‘environment.’ The Complaint alleges a ‘drinking water supply’ to be within the meaning of ‘environment’ using definitions of those terms from the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.* (“CERCLA”). (*See* Compl. ¶¶ 13-15, 22.) That is,

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<sup>6</sup> Support for this position is outlined at p. 3 n.1, *supra*.

according to the Complaint, a discharge into the Village's 'drinking water supply' equates to a discharge into the 'environment' under the Act because of the meaning of the terms 'drinking water supply' and 'environment' under CERCLA. (*Id.* at ¶¶ 2, 15.) Complainants neither explain nor provide legal support for its interpretation of 'environment' under the Act. Nor could they, as there is simply no basis for one to conclude that the General Assembly intended to use CERCLA, a federal statute enacted approximately 10 years after the Act, to define its terms, and Aqua is unaware of any Board opinion that used CERCLA to define an undefined term appearing under the Act. In fact, the Board has declined to adopt similar arguments.<sup>7</sup>

As an undefined term of the Act, the word 'environment' should instead be given its plain and ordinary meaning. *Town & Country Utils., Inc. v. IPCB*, 866 N.E.2d 227, 235 (Ill. 2007) ("We give statutory language its plain and ordinary meaning."). "[W]hen a term contained in a statute has not been defined by the legislature, [courts] may employ a dictionary definition to ascertain its meaning." *Mashal v. City of Chicago*, 981 N.E.2d 951, 959 (Ill. 2012). Around the time of the Act's enactment in 1970, the word 'environment' was defined as "the whole complex of climatic, edaphic, and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival." *Webster's Dictionary* (1971). This definition obviously describes the natural world, a meaning which seems consistent with the purposes of the Act. The only Illinois statute which defines the term aligns with a natural world definition, too: 'Environment' means "water, air, and land and the interrelationship that exists among and

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<sup>7</sup> See, e.g., *Nat'l Env'tl. Servs. Corp. v. IEPA*, PCB 89-129, 1990 WL 124791, at \*4 (July 19, 1990) ("The question presented is one of Illinois state law regarding assessment of a tax or fee on certain activities. The fact that federal regulatory law under RCRA or CERCLA, does not include particular infectious wastes under certain statutory definitions (R. 13-19), seems not to be controlling. Section 22.2, setting fees on hazardous waste activities, was originally part of House Bill 453, which was signed by the Governor to become Public Act 81-856 on September 21, 1979. There were no federal regulations defining hazardous waste at that time.").

between water, air, land, and all living things.” 430 ILCS 100/3.<sup>8</sup> The Complaint, however, does not allege a discharge into any aspect of the natural world. It must therefore be dismissed.

Second, Complainants’ Section 5/12(a) assertions further fail because they make only conclusory averments of ‘water pollution’<sup>9</sup> without addressing ‘waters,’<sup>10</sup> a statutory element of a water pollution claim. That is, the Complaint fails to identify any ‘waters’ at all. In doing so, the Complaint fails to allege a prima facie element of a water pollution claim. Its Section 5/12(a) claims must thus be dismissed. *See, e.g., People v. Blick’s Construction Co.*, PCB 13-43, 2013 WL 2298400, at \*6 (May 16, 2013) (“Illinois requires fact-pleading. . . . which requires the pleader to set out the ultimate facts which support his cause of action.”).

Third, the Complaint fails to plead all elements required by Board Rule 103.204(c)(2), which provides that “[t]he complaint must . . . contain . . . [t]he dates, locations, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense.” 35 Ill. Admin. Code § 103.204(c)(2). Nowhere does the Complaint assert any date of an alleged Section 5/12(a)

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<sup>8</sup> This definition is used for purposes of the Illinois Emergency Planning and Community Right to Know Act, 430 ILCS 100/1, *et seq.*

<sup>9</sup> ‘Water pollution’ means “such alteration of the physical, thermal, chemical, biological or radioactive properties of any *waters* of the State, or such discharge of any contaminant into any *waters* of the State, as will or is likely to create a nuisance or render such *waters* harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.545 (emphasis added).

<sup>10</sup> ‘Waters’ means “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.” 415 ILCS 5/3.550; *compare People v. Atkinson Landfill Co.*, PCB 13-28, 2014 WL 186652, at \*20 (Jan. 9, 2014) (holding that two rivers are “indisputably ‘waters of the State’”), *with In the Matter of: Petition of Abbott Lab ’ys for an Adjusted Standard*, AS 99-5, 1999 WL 304658 (May 6, 1999) (holding that pond system located on business campus is not a “waters of the State”).

violation, the location of an alleged Section 5/12(a) violation, the duration of an alleged Section 5/12(a) violation, or the strength of discharge allegedly in violation of Section 5/12(a). Instead, the Complaint vaguely contends that all Complainants were “residents of the Village of University Park” “at all relevant times” (Compl. ¶ 4.); Complainants were advised on June 19, 2019, to not consume tap water (*Id.* at ¶ 33); and some Complainants had elevated lead levels, “*i.e.*, greater than 15 ppb” (*Id.* at ¶¶ 32, 35). These vague assertions are contrary to the specificity required by Board Rule 103.204(c)(2) and warrant dismissal of the Complaint.

Because the Complaint fails to sufficiently state a violation of the Act, it must be dismissed as frivolous.

**d. Any Valid Claim Under Section 5/12(a) of the Act Would Be Time Barred.**

Even if the Board were empowered to grant Complainants’ desired relief (it is not), and if the Complaint asserted valid claims under Section 5/12(a) (it does not), those Section 5/12(a) claims would be barred by applicable statutes of limitations.

Because the Complaint’s Section 5/12(a) assertions are presented as predicates to Complainants’ torts, those Section 5/12(a) assertions fall with the torts. If the Board instead interprets the Complaint to state Section 5/12(a) claims independent of its torts, those claims would be barred by the five-year statute of limitations under 735 ILCS 5/13-205. The Board has acknowledged that the five-year statute of limitations of Section 13-205 applies to actions that are brought by a citizen to enforce a violation of the Act. *See, e.g., Caseyville Sport Choice, LLC v. Erma I. Seiber*, PCB 08-30, 2008 WL 5716999, at \*2 (Oct. 16, 2008) (applying Section 13-205 statute of limitations to Section 31(d) citizen enforcement complaint); *Johns Manville v. IDOT*, PCB 14-3, 2014 WL 4489877, at \*7-8 (Sept. 4, 2014) (same).

Here, Complainants allege that Aqua violated Section 5/12(a) of the Act by causing or allowing the discharge of a contaminant (a chemical or lead) into a drinking water system. (*See* Compl. ¶¶ 15-28.) The only dates alleged by the Complaint are June 14, 2019 (when Aqua instructed Village residents not to consumer their tap water) and July 29, 2019 (when Aqua lifted its “do not consume” instruction and issued a lead advisory). (*Id.* at ¶¶ 33, 34.) Only the former date is associated with an alleged harm. Accordingly, the Complainants’ Section 5/12(a) claims began to accrue, at the latest, on June 14, 2019, when “all Complainants and Class members were instructed to not consume their tap water on their properties.” The Section 5/12(a) claims therefore are time barred because the statute of limitations lapsed in June 2024.

## **II. The Complaint Must Be Dismissed as Duplicative.**

As noted above, the Act and the Board’s rules direct the Board to dismiss a complaint if it is ‘duplicative.’ 415 ILCS 5/31(d)(1); 35 Ill. Admin. Code § 103.212(a). A complaint is duplicative if it is “**identical or substantially similar** to one brought before the Board or another forum.” 35 Ill. Admin. Code § 101.202 (emphasis added). In *League of Women Voters v. N. Shore Sanitary Dist.*, the Board explained that the reason for prohibiting duplicitous complaints is “the apprehension that private citizens’ complaints might flood the Board with too many cases raising the same issue and (might) unduly harass a respondent.” PCB 70-7, 1970 WL 3665, at \*2 (Oct. 8, 1970). This case exemplifies that sentiment. As previewed by Paragraph 7 of the Complaint, the alleged “pollution at issue in the matter” is already being litigated in **four** other venues—the Will County Circuit Court (the “Government Action”), the Illinois Court of Appeals Third District (the “State Class Action”), the U.S. Federal District Court for the Northern District of Illinois

(the “Federal Class Action”), and the ICC (the “ICC Action”).<sup>11</sup> Including this case, four of the five pending actions are brought by counsel for Complainants, Mr. Zimmerman, seeking the same damages.<sup>12</sup> Of those four cases brought by Mr. Zimmerman, three—the State Class Action, the Federal Class Action, and this matter—seek those same damages for a class of residents. Copies of the operative complaints in each action are attached as **Exhibit B** (the “Government Complaint”), **Exhibit C** (the “State Complaint”), **Exhibit D** (the “Federal Complaint”), and **Exhibit E** (the “ICC Complaint”).<sup>13</sup> As explained below, the Complaint is duplicative of each of the other actions and must be dismissed, in whole or part.

In determining whether a matter is “identical or substantially similar as the one brought before the Board” under 35 Ill. Admin. Code § 101.202, the Board has considered the following factors: whether (1) the parties to the two matters are the same; (2) the proceedings are based on the same legal theories; (3) the violations alleged in the two matters occurred over the same time period; and (4) the same relief is sought in the two proceedings.” *Sierra Club v. Midwest Generation, LLC*, PCB No. 13-15, 2013 WL 5524474, at \*22 (Oct. 3, 2013); *see also United City*

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<sup>11</sup> The “Government Action” is *People of the State of Ill. v. Aqua Ill., Inc.*, Case No. 19 CH 1208 (Will Cnty., Ill.). The “State Class Action” is *Henderson v. Aqua Ill., Inc.*, Case No. 19 CH 1852 (Will Cnty., Ill.). The “Federal Class Action” is *Arnold v. Aqua Ill., Inc.*, Case No. 25 cv 2522 (N.D. Ill.). The “ICC Action” is *Biloche v. Aqua Ill., Inc.*, Docket No. 25-2309 (Ill. Com. Comm’n).

<sup>12</sup> Mr. Zimmerman moved to intervene in the Government Action after the Consent Order had already been fully executed but was denied. *See Exhibit A*, Order, *People of the State of Ill. v. Aqua Ill., Inc.*, Case No. 19 CH 1208 (Will Cnty., Ill. Apr. 5, 2024) (the “Denial Order”) (“The *Henderson* Class Petitioners’ Petition to Intervene is DENIED.”).

<sup>13</sup> Aqua requests the Board take judicial notice of the Government Complaint, State Complaint, Federal Complaint, ICC Complaint, and Denial Order. Complainants already refer to each of these four actions in Paragraph 7 of the Complaint. *See In re Linda B.*, 91 N.E.3d 813, 821 n.7 (Ill. 2017) (“Public documents, such as those included in the records of other courts and administrative tribunals, fall within the category of “readily verifiable” facts capable of instant and unquestionable demonstration of which a court may take judicial notice.”); *see e.g., Morton College Bd. Trustees of Ill. Cmty. Coll. Dist. No. 527 v. Town of Cicero*, PCB 98-59, 1998 WL 12170, at \*1 (Jan. 22, 1998) (taking judicial notice of respondent’s complaint filed in Cook County Circuit Court).

of *Yorkville v. Hamman Farms*, PCB No. 08-96, 2009 WL 926750, at \*5-6 (Apr. 2, 2009). For example, in *DoAll Co. v. Skokie Valley Asphalt Co.*, DoAll Co. sought to recover remediation costs from two other companies, suing in both state court and before the Board. PCB 94-256, 1995 WL 415502, at \*2 (July 7, 1995). The Board found the cost recovery claims duplicative, because “[i]n both actions, DoAll seeks to hold the same parties responsible for the same costs DoAll incurred in remediating the same contamination.” *Id.* Therefore, the Board dismissed the cost recovery claims from the suit, even though the cost recovery claims before the Board were based on the Act, while those brought in the state court were premised on common law. *Id.* See also *Vill. of Addison v. City of Wood Dale*, PCB 98-104, 1998 WL 112507, at \*1-2 (Mar. 5, 1998) (finding a complaint before the Board “clearly duplicitous” of a circuit court complaint, even though the two cases involved different parties).

A complaint need not raise identical issues, or be based on identical facts, to be “duplicative” under the Act and the Board’s rules. See 35 Ill. Admin. Code. § 101.202 (defining “duplicative” as “substantially similar”). In *Brandle v. Rapp*, for example, the respondent moved to dismiss a complaint regarding an allegedly unpermitted waste disposal operation where a similar complaint was pending in state court. PCB 85-68, 1985 WL 21380, at \*1 (June 13, 1985).<sup>14</sup> Over the complainant’s objections, the Board dismissed the case, holding that “[a]lthough the complaints are not precisely identical the issues are substantially similar to those pending before the Circuit Court.” *Id.* at \*2; see also *Mather Inv. Props., LLC v. Ill. State Trapshooters, Ass’n.*, PCB 05-29, 2005 WL 1943585, at \*4 (July 21, 2005) (“A complaint would

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<sup>14</sup> This case applied an earlier version of the Board’s rules, under which complaints could be dismissed as ‘duplicitous.’ *Id.* at \*1. The Board has explained, however, that the terms ‘duplicitous’ and ‘duplicative’ should be understood as interchangeable. *Rulon v. Double D Gun Club*, PCB 03-7, 2002 WL 2012431, at 2 n.1 (Aug. 22, 2002) (“The Board and the courts had consistently interpreted ‘duplicitous’ to mean ‘duplicative.’”).

be [duplicative] if another action was pending between the same parties, alleging substantially the same violations, before another tribunal with power to grant the same relief as the Board.”).

As explained at Subpart II.a below, application of the above-stated authority to the action at bar demonstrates that the instant proceeding is plainly duplicative of the Government Action. In turn, the subsequent subparts below demonstrate that this action also is duplicative of the other actions filed by Complainants’ counsel: the State Class Action, Federal Class Action, and ICC Action, in whole or part.

**a. This Action is Duplicative of the Government Action.**

The People of Illinois and Will County filed their Complaint for Injunctive Relief and Civil Penalties on August 26, 2019, in Will County Circuit Court. (*see* Ex. B, Government Compl.) Count I of the Government Complaint asserted, on behalf of the People of Illinois and Will County, a claim under Section 5/18(a) of the Act, 415 ILCS 5/18(a), based on the precise same alleged conduct here—namely, the 2017 addition of a chemical to Aqua’s University Park Public Water system, the 2019 discovery of elevated levels of lead in homes of Village residents, and Aqua’s issuance of a ‘Do Not Consume’ and ‘Lead Advisory Area.’ (*See id.* at ¶¶ 16-34.) The Complaint similarly asserts a violation via Section 5/12(a) of the Act as predicates to three alleged common law torts. As further outlined below, the action at bar is duplicative of the Government Action because the parties, legal theories and time periods, and requested relief are the same or substantially similar.

- **Parties:** The plaintiffs in the Government Action—the People of Illinois and Will County—represented the interests of all Complainants and thus are the same, or substantially similar, to the Complainants. Privity of the parties exists when an agency acts in its *parens patriae* role as a representative of the public, as the Illinois Attorney General did in the Government Action, which was resolved by the Consent Order. *Friends of Milwaukee’s Rivers v. Milwaukee Metro. Sewerage Dist.*, 382 F.3d 743, 759 (7th Cir. 2004). “The Illinois Attorney General serves the broader interests of the State.” *People ex rel. Sklodowski v. State*, 162 Ill. 2d 117, 127 (1994); *see also*

*Env't Prot. Agency v. IPCB*, 69 Ill. 2d 394, 401 (1977) (“The Attorney General’s responsibility . . . embraces serving or representing the broader interests of the State.”).

- **Legal Theories & Time Period:** Both the Complaint and Government Complaint assert a violation of the Act predicated on the exact same facts over the same time period. (*Compare* Compl. at ¶¶ 29-36, *with* Ex. B, Government Compl. at ¶¶ 16-34.) Indeed, the only variance in legal theories under the Act is that the Government Action alleged a violation of Act Section 5/18(a) rather than Section 5/12(a). Respondent submits that said difference is immaterial for purposes of a duplicative assessment. *See, e.g., Brandle v. Rapp*, PCB 85-68, 1985 WL 21380, at \*1 (June 13, 1985); *Quantum Chem. Corp. v. Hartford Steam Boiler Inspection and Ins. Co.*, 246 Ill. App. 3d 557, 560 (Ill. App. Ct. 3d Dist. 1993) (“The crucial inquiry is whether the two causes of action arise out of the same transaction or occurrence . . . .”) The Government Complaint also asserts a public nuisance claim that mirrors that of the Complaint. (*Compare* Compl. at ¶¶ 46-53, *with* Ex. B, Government Compl. at ¶¶ 34-38.)
- **Requested Relief:** Understanding the limitations of the Act, the Government Action sought injunctive relief and civil penalties rather than damages. (*See* Ex. B, Government Compl. at pp. 11, 19-20, 23-24, 26-27, 28.)<sup>15</sup> The Complaint does the opposite, seeking class certification, damages, and attorney fees/costs, which, as discussed *supra*, may not be granted by the Board. (*See* Compl. at ¶¶ 53, 60, 68.) To the extent Complainants move to amend their complaint to seek a civil penalty, such would be barred as duplicative by the Government Action. For the Board’s information, a Consent Order has been entered in the Government Action. Under that Consent Order, Aqua is implementing a Technical Assistance Program at a cost of up to \$900,000 and will pay a civil penalty of up to \$200,000. (Ex. F, Consent Order at ¶ III.A.1.) The Will County Circuit Court continues to have jurisdiction over the Government Action, making it an active case.<sup>16</sup>

**b. The Torts of this Action Are Duplicative of the State Class Action.**

The State Class Action against Aqua was filed on September 3, 2019 (*see* Ex. C, State Complaint) and dismissed on December 20, 2024, because the court determined that its claims

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<sup>15</sup> The Government Complaint also sought attorney’s fees and costs. As explained at Part I.a, *supra*, Section 42(f) of the Act allows fees and costs only to the Attorney General or a State’s Attorney when prevailing in an enforcement action on behalf of the People of the State of Illinois. *See Dayton Hudson Corp. v. Cardinal Indus., Inc.*, PCB 97-134, 1997 WL 530523, at \*7 (Aug. 21, 1997).

<sup>16</sup> *See* Ex. F, Consent Order at ¶¶ III.K.1 and 2 (explaining the process for eventual termination by the court after 18 months of the court’s entry on July 10, 2024). For the reasons stated at p. 13 n.13, *supra*, Aqua asks the Board to take judication notice of the Consent Order which is attached as **Exhibit F**.

were within the jurisdiction of the ICC. Counsel for Complainants is appealing that decision. As outlined below, the torts of this Action are duplicative of the State Class Action.<sup>17</sup>

- **Parties.** The parties to the State Complaint and Complaint are the same in that they define the putative class identically as “All persons and entities in the Village of University Park, Illinois who obtained water from” the UP System “and were under a ‘do not consumer’ notice or ‘lead advisory’ at any time during the Class Period.” (*Compare* Ex. C, State Compl. ¶ 64, *with* Compl. ¶ 39.)
- **Legal Theories & Time Period.** The Class Period in both proceedings also is defined the same as beginning in 2017. (*Compare* Ex. C, State Compl. ¶ 65, *with* Compl. ¶ 40.) Further, the State Complaint is based on the very same alleged conduct and same time period as the Complaint. (*Compare* Ex. C, State Compl. ¶¶ 21-36, *with* Compl. ¶¶ 29-37.) The causes of action are substantively identical; the State Complaint and Complaint entail claims for public and private nuisance, negligence, and trespass. (*Compare* Ex. C, State Compl. ¶¶ 72-95, *with* Compl. at ¶¶ 46-68.)
- **Relief.** The requested relief is likewise the same in both proceedings; the complainants in each case seek class certification, damages, and attorney’s fees and litigation costs. (*Compare* Ex. C, State Compl. ¶¶ 78, 89, 95, *with* Compl. ¶¶ 53, 60, 68.)

For these reasons, the tort claims of the Complaint should be dismissed as duplicative of the State Class Action.<sup>18</sup>

**c. The Torts of this Action are Duplicative of the Federal Class Action.**

The Federal Class Action was filed on March 11, 2025, in the U.S. District Court for the Northern District of Illinois. (*See* Ex. D, Federal Compl.) As outlined below, the torts alleged in Federal Complaint are duplicative of the Complaint.<sup>19</sup>

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<sup>17</sup> The State Complaint includes assertions of violations of the Act and Board rules as predicates to its tort claims. Because the merits of those assertions (if properly pled and timely) would be appropriate for the Board rather than the court, Aqua does not here contend that any valid independent Section 5/12(a) claims of the Complaint are duplicative of the State Class Action.

<sup>18</sup> That the torts of this action are duplicative of the torts alleged in the State Class Action does not mean that the torts alleged in the State Class Action have merit or are properly before the court.

<sup>19</sup> The Federal Complaint includes assertions of violations of the Act and Board rules as predicates to its tort claims. Because the merits of those assertions (if properly pled and timely) would be appropriate for the Board rather than the court, Aqua does not here contend that any valid independent Section 5/12(a) claims of the Complaint are duplicative of the Federal Class Action.

- **Parties.** Like the State Class Action, the parties to the Federal Class Action Complaint and Complaint are the same in that they define the putative class identically as “All persons and entities in the Village of University Park, Illinois who obtained water from” the UP System “and were under a ‘do not consumer’ notice or ‘lead advisory’ at any time during the Class Period.” (*Compare* Ex. D, Federal Compl. ¶ 180, *with* Compl. ¶ 39.)
- **Legal Theories & Time Period.** The Class Period in both proceedings also is defined the same as beginning in 2017. (*Compare* Ex. D, Federal Compl. ¶ 181, *with* Compl. ¶ 40.) Further, the State Complaint is based on the very same alleged conduct and same time period as the Complaint. (*Compare* Ex. D, Federal Compl. ¶¶ 8-25, 59-64, 79-83, *with* Compl. ¶¶ 29-37.) The causes of action are substantively identical; the Federal Complaint and Complaint entail claims for public and private nuisance, negligence, and trespass.<sup>20</sup> (*Compare* Ex. D, Federal Compl. ¶¶ 202-30, *with* Compl. at ¶¶ 46-68.)
- **Relief.** The requested relief is likewise the same in both proceedings; the complainants in each case seek class certification, damages, and attorney’s fees and litigation costs. (*Compare* Ex. D, Federal Compl. pp. 60-61, *with* Compl. ¶¶ 53, 60, 68.)

For these reasons, the Complaint’s torts should be dismissed because as duplicative of the Federal Class Action.<sup>21</sup>

**d. This Action is Duplicative of the ICC Action.**

The substantive allegations of the ICC Complaint (*see* Ex. E) and Complaint are identical, except for the omission of class action allegations from the ICC Complaint and the identity of the complainants. The two complaints concern identical time periods, legal theories, and requested relief. Indeed, a reading of the two complaints indicates that Complainants’ counsel repurposed their ICC Complaint for this action. (*See* Compl. ¶ 1 (referring to the Complaint as “Informal”).) Accordingly, the Board should dismiss the Complaint as duplicative,

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<sup>20</sup> To attempt to satisfy subject matter jurisdictional requirements, the Federal Complaint also asserts a novel claim for cost recovery under CERCLA. (*See* Ex. D, Federal Compl. ¶¶ 195-201.)

<sup>21</sup> That the torts of this action are duplicative of the torts alleged in the Federal Class Action does not mean that the torts alleged in the Federal Class Action have merit or are properly before the court.

at least as to the complainants named in the ICC Complaint who are putative class members in this action.

### **III. The Doctrine of Res Judicata Bars Complainants' Claims.**

Complainants' claims—both its torts which are predicated on alleged violations of the Act, and its alleged violations of the Act themselves—are barred by the doctrine of *res judicata* because Aqua's liability under the Act for the alleged pollution at issue was resolved via the Consent Order<sup>22</sup> entered in the Government Action. The Board has previously explained that “[t]he doctrine of res judicata provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.” *Nelson v. Kane Cnty. Bd.*, PCB 95-56 1995 WL 314455, at \*2 (May 18, 1995) (citations omitted). The Board further found that “[r]es judicata bars all matters that were actually raised or could have been raised in the prior proceeding” and that “an order dismissing a suit with prejudice is considered a final judgment on the merits for purposes of applying res judicata. *Id.*

In another opinion, the Board similarly described the three elements of res judicata as follows: “(1) an identity of parties or their privies; (2) an identity of cause of action; and (3) a final judgment on the merits rendered by a court of competent jurisdiction.” *Kean Oil Co. v. Ill. Env't Prot. Agency*, PCB 97-146, 1997 WL 235242, at \*7 (May 1, 1997). This same standard is used by courts to apply res judicata to Illinois claims. *See, e.g., Squires-Cannon v. Forest Pres. Dist. of Cook Cnty.*, 897 F.3d 797, 804 n.8 (7th Cir. 2018) (“In Illinois, claim preclusion requires

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<sup>22</sup> See Plaintiff's Motion for Approval and Entry of Consent Order, *People of the State of Ill. v. Aqua Ill., Inc.*, No. 19CH1208 (Cir. Ct. Will Cnty. Oct. 5, 2023), attached as **Exhibit G**. For the reasons stated at n.14, *supra*, Aqua asks the Board to take judgment notice of Exhibit G.

(1) a final judgment on the merits, (2) identical causes of action, and (3) identical parties or their privies.” (citations omitted)).

As set forth further below, all three elements of res judicata are met such that the Government Action and its active Consent Order bar Complainants’ assertions of Section 5/12(a) violations and common law tort claims.

First, the Consent Order entered by the Circuit Court in the Government Action is a final judgment on the merits. *See, e.g., Grabscheid v. E&A Indus., Inc.*, No. 01 C 8480, 2002 WL 31854967, at \*7 (N.D. Ill. Dec. 18, 2002) (“Typically, a consent order will bar a new lawsuit arising from the same dispute in which the consent order was entered.” (citing *United States v. Fisher*, 864 F.2d 434, 439 (7th Cir. 1988) (collecting cases))).

Second, the Government Action and instant proceeding constitute the same causes of action. Illinois courts consider two actions to be “the same cause of action for purposes of res judicata if they arise from a single group of operative facts, regardless of whether they assert different theories of relief.” *See, e.g., Squires-Cannon*, 897 F.3d at 804 n.8. Even a cursory review of the Consent Order and Complaint demonstrates that the actions concern the exact same operative facts—that is, those facts concerning the 2017 source water change for the PWS and the 2019 findings of elevated lead levels in tap water within some Village homes.<sup>23</sup> Moreover, it is certainly true that, to the extent it was possible for anyone to bring a claim under Section

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<sup>23</sup> (*Compare* Ex. B, Government Compl. ¶¶ 16-34, *with* Compl. ¶¶ 29-35.) In addition to fully resolving Aqua’s liability under the Act, the Consent Order resolved the Government Action’s public nuisance claim. (Ex. F, Consent Order ¶ III.J.) Thus, the Complaint’s public nuisance claim also is independently barred by res judicata.

5/12(a) regarding the 2017 source water change and resulting 2019 elevated lead levels in some Village homes, the People of Illinois could have done so in the Government Action.<sup>24</sup>

Finally, privity of the parties exists here because Aqua entered into the Consent Order with the People of Illinois and Will County, entities that inherently represent the interests of all Complainants. *See e.g., Friends of Milwaukee's Rivers v. Milwaukee Metro. Sewerage Dist.*, 382 F.3d 743, 758-59 (7th Cir. 2004) (“We agree with the district court that a person not a party to a previous action can be said to be in privity with an ‘official or agency invested by law with authority to represent the person’s interests.’”).

In sum, because the Complaint’s assertions of Section 5/12(a) violations are predicates to its torts, both the alleged Section 5/12(a) violation and torts, are barred by res judicata.

#### **IV. Conclusion**

For the foregoing reasons, Aqua respectfully requests that the Board dismiss the Complaint as frivolous and duplicative and grant such other relief as the Board deems appropriate.

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<sup>24</sup> In the Government Action, the People of Illinois chose to bring a Section 5/18(a) claim without an additional claim under Section 5/12(a). (*See* Ex. B, Government Compl. ¶¶ 35-48.)

Dated: April 17, 2025

Respectfully submitted,

AQUA ILLINOIS, INC.

/s/ Daniel J. Deeb  
One of its Attorneys

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*Attorneys for Aqua Illinois, Inc.*

**LIST OF EXHIBITS**

- EXHIBIT A:** Order, *People of the State of Ill. v. Aqua Ill., Inc.*, Case No. 19 CH 1208 (Will Cnty., Ill. Apr. 5, 2024)
- EXHIBIT B:** Complaint for Injunctive Relief and Civil Penalties, *People of the State of Ill. v. Aqua Ill., Inc.*, Case No. 19 CH 1208 (Will Cnty., Ill. Aug. 16, 2019)
- EXHIBIT C:** Amended Class Action Complaint, *Henderson v. Aqua Ill., Inc.*, Case No. 19 CH 1852 (Will Cnty., Ill. Apr. 1, 2021)
- EXHIBIT D:** Class Action Complaint, *Arnold v. Aqua Ill., Inc.*, Case No. 25 cv 2522 (N.D. Ill. Mar. 11, 2025)
- EXHIBIT E:** Informal Complaint, *Biloche v. Aqua Ill., Inc.*, Docket No. 25-2309 (Ill. Com. Comm'n)
- EXHIBIT F:** Consent Order, *People of the State of Ill. v. Aqua Ill., Inc.*, Case No. 19 CH 1208 (Will Cnty., Ill. July 10, 2024)
- EXHIBIT G:** Plaintiff's Motion for Approval and Entry of Consent Order, *People of the State of Ill. v. Aqua Ill., Inc.*, No. 19CH1208 (Cir. Ct. Will Cnty. Oct. 5, 2023)

**EXHIBIT A**

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION

FILED  
2024 APR -5 PM 4: 28  
CIRCUIT COURT  
WILL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* KWAME RAOUL, Attorney General )  
of the State of Illinois, and )  
*ex rel.* JAMES W. GLASGOW, )  
State's Attorney for Will County, Illinois, )  
Plaintiff, )  
v. )  
AQUA ILLINOIS, INC., an Illinois corporation, )  
Defendant. )

No. 19CH1208

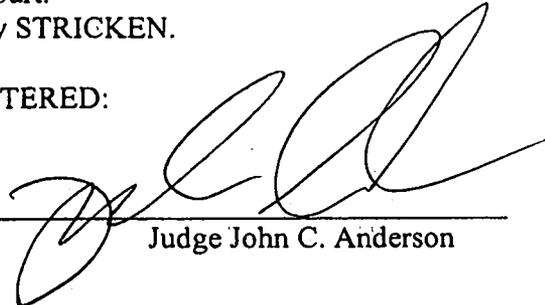
**ORDER**

This cause coming on to be heard on: (i) Plaintiff's Motion to Approve and Enter Consent Order; (ii) Village of University Park's Petition to Intervene and Delay Entry of the Consent Order; and (iii) *Henderson* Class Petitioners' Petition to Intervene on Behalf of the Putative Class for the Limited Purpose of Ensuring their Class Action Claims Are Not Released by Entry of the Proposed Consent Order. After hearing argument and reviewing all pleadings filed in these causes, the Court finds as follows:

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Approve and Enter Consent Order is DENIED without prejudice.
2. The Village of University Park's Petition to Intervene is GRANTED for the reasons advanced by University Park.
3. The *Henderson* Class Petitioners' Petition to Intervene is DENIED.
4. The Court takes no position as to whether the rulings in this case bind the Class Petitioners in this or any other matter.
5. The scope of University Park's involvement may be limited as the Court deems necessary due to the advanced age and procedural posture of the case.
6. This matter is continued for status by agreement of the Parties to May 3, 2024 at 9:00 a.m. without further order of this Court.
7. The status date of April 5, 2024 is hereby STRICKEN.

ENTERED:

  
\_\_\_\_\_  
Judge John C. Anderson

DATE: April 5, 2024

**EXHIBIT B**

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and )  
*ex rel.* JAMES W. GLASGOW, )  
State's Attorney for Will County, Illinois, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )  
 )  
Defendant. )

No. 19CH1208

**COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, and *ex rel.* JAMES W. GLASGOW, State's Attorney for Will County, Illinois, on his own motion, complains of Defendant, AQUA ILLINOIS, INC., an Illinois domestic corporation, as follows:

**COUNT I**

**FAILURE TO PROVIDE ASSUREDLY SAFE WATER**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and JAMES W. GLASGOW, State's Attorney for Will County, Illinois, on his own motion, pursuant to the terms and provisions of Sections 42(d) and (e) of the Illinois Environmental Protection Act

**Initial case management set for  
12/4/2019 at: 9:00 a.m.**

("Act"), 415 ILCS 5/42(d) and (e) (2018).

2. Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2018), and charged, *inter alia*, with the duty of enforcing the Act, as well as administering and enforcing the regulations which have been adopted by the Illinois Pollution Control Board ("Board").

3. The Attorney General is the chief law enforcement officer for the State of Illinois and is charged, *inter alia*, with the duty of enforcing the Act and Board regulations. The Attorney General and the Will County State's Attorney have authority under Section 42 of the Act, 415 ILCS 5/42 (2018), to pursue enforcement actions for violation of the State of Illinois's environmental statutes and regulations.

4. Defendant Aqua Illinois, Inc. ("Aqua") is an Illinois domestic corporation, with its principal place of business located at 187 South Schuyler Avenue, in the City of Kankakee, Kankakee County, Illinois.

5. Aqua owns and operates the public water system ("Public Water System") in the Village of University Park ("Village"), which consists of water mains, pumping stations, and other infrastructural components. The Village, located in Will and Cook Counties in Illinois, has a population of approximately 7,000 residents who are served through approximately 1,975 water service connections.

6. The Village is located in a portion of the State of Illinois that has been designated by Illinois EPA as an area of Environmental Justice concern, because it is a community with a percentage of low-income and/or minority residents that is greater than twice the statewide average. Currently, the poverty rate in the State is approximately 13.5%, and the State's minority population is approximately 29%, out of a total population of just over 12.8 million people.

**A. AQUA CHANGES WATER SOURCE FOR VILLAGE DRINKING WATER**

**A.1. PETITION TO THE ILLINOIS COMMERCE COMMISSION**

7. On March 27, 2013, Aqua filed a Verified Petition with the Illinois Commerce Commission (“ICC”) seeking the ICC’s permission to switch the source of the Village’s water from local groundwater wells to water drawn from the Kankakee River, citing long-standing customer complaints about water quality.

8. On July 30, 2014, the ICC issued its final order approving Aqua’s request to switch the source of the Village’s water to the Kankakee River.

9. The chemistry of the water obtained from the groundwater wells and previously distributed by Aqua through the Public Water System is different than the chemistry of the water obtained from the Kankakee River which is currently distributed by Aqua through the Public Water System.

**A.2. AQUA WATER TRANSMISSION MAIN**

10. On or about October 28, 2015, Aqua submitted an application for a construction permit to Illinois EPA, pursuant to which Aqua sought to construct a water transmission main from the Kankakee River to the Village, whereby the Public Water System would then provide water to the Village from the River, rather than from local groundwater wells.

11. On December 23, 2015, Illinois EPA issued Construction Permit 0445-FY2016 to Aqua, pursuant to which Aqua was authorized to proceed with “the construction and/or installation” of the new water transmission main for transporting Kankakee River water to the Public Water System.

12. On information and belief, on or about December 9, 2017, Aqua began providing Kankakee River water to the Village and its residents and customers therein.

13. As of December 9, 2017, Aqua had not applied for, or obtained from the Illinois EPA, an operating permit to put the newly-constructed water transmission main into service.

14. On or about December 22, 2017, Aqua submitted an application to Illinois EPA for an operating permit, seeking authorization to put the newly-constructed water transmission main from the Kankakee River to the Village into service.

15. On March 27, 2018, Illinois EPA issued an operating permit to Aqua, authorizing the company to begin use of the newly-constructed water transmission main, such that Aqua could legally begin drawing water for the Public Water System from the Kankakee River.

**A.3. AQUA'S BLENDED PHOSPHATE ADDITION AT CENTRAL AVENUE BOOSTER STATION**

16. Beginning in December 2017, on a date better known to Aqua, Aqua began (a) using a blended phosphate mix, comprised primarily of polyphosphate, and (b) inserting that blended phosphate mix into the Public Water System at the Central Avenue Booster Station, which is located at 1125 Central Avenue, University Park, Illinois. The blended phosphate was used to sequester iron in the Village's drinking water in response to citizen complaints.

17. At the time that Aqua began using the Central Avenue Booster Station in December 2017, it had not submitted any plans or specifications to Illinois EPA that described how the Central Avenue Booster Station would be modified. Additionally at that same time, Aqua neither applied for, nor obtained a construction permit and operating permit from Illinois EPA authorizing it to construct and operate certain improvements at the Central Avenue Booster Station where it introduced the blended phosphate into the Public Water System.

18. On June 25, 2018, Aqua submitted a construction permit application to Illinois EPA to "[i]ninstall a blended phosphate feed system, complete with a chemical feed pump . . . along with

associated tankage, anti-siphon valve feed lines, controls and necessary appurtenances” at the Central Avenue Booster Station.

19. On September 19, 2018, Illinois EPA issued Construction Permit No. 1321-FY-2018 to Aqua, authorizing it to construct certain improvements at the Central Avenue Booster Station, including the blended phosphate feed system at that facility.

20. On November 13, 2018, Aqua submitted an application to Illinois EPA for an operating permit, seeking authorization for its use of the Central Avenue Booster Station as the introduction point for blended phosphate into the Public Water System.

21. On November 20, 2018, Illinois EPA issued an operating permit to Aqua, pursuant to which Aqua was authorized to introduce a blended phosphate into the Public Water System at the Central Avenue Booster Station.

22. On information and belief, an adverse reaction caused by the change in source water chemistry, including from Aqua’s addition of the blended phosphate, resulted in removal of protective scale from residential plumbing within homes in the Village served by Aqua’s Public Water System.

**B. AQUA’S AUGUST 2018 SAMPLING**

23. In accordance with the requirements of the Board’s public water supply regulations (“Board PWS Regulations”) governing lead and copper, 35 Ill. Adm. Code Part 611, Subpart G, Aqua is required to conduct periodic sampling for lead in the drinking water at the faucets of a fixed number of homes in the Village.

24. Pursuant to Section 611.350(c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.350(c), 15 micrograms per liter (“ug/L”) is the “action level” for lead in drinking water. Compliance with the action level is determined at the 90<sup>th</sup> percentile concentration of all samples

collected, or in other words, no more than 10 percent of the samples collected can exceed the action level. The action level is triggered when the concentration of lead in drinking water in more than 10 percent of the samples collected exceeds 15 ug/L.

25. Once the action level is exceeded, water providers such as Aqua are required to implement a variety of measures in response, including, but not limited to, additional corrosion control treatment measures, public education measures, potential lead service line removal and potential increased monitoring activities.

26. Pursuant to the Board PWS Regulations, prior to switching the source of the Public Water System's water to the Kankakee River, Aqua was required to conduct lead compliance sampling on a triennial basis of the water that was supplied to the Public Water System.

27. Once Aqua switched the water source for the Public Water System to the Kankakee River, Aqua was required to conduct lead compliance sampling every six months.

28. In August 2018, Aqua conducted the first required six month lead compliance sampling event on homes in the Village ("August 2018 Testing"). Initial results showed that the 90th percentile lead concentration was 15 ug/L, which was right at, but not exceeding the lead action level.

### **C. AQUA'S MAY 2019 TESTING**

29. In late May 2019, Aqua conducted the second six month required compliance sampling event on homes within the Village ("May 2019 Testing"). The May 2019 Testing showed lead levels in the tested water ranging from less than 1.0 ug/L to 1700 ug/L. The May 2019 Testing results were received by Illinois EPA in July 2019. Based on the sampling results, the 90<sup>th</sup> percentile lead concentration for the May 2019 Testing was 131 ug/L, which represents an action level exceedance.

**D. AQUA'S ACTIONS FOLLOWING MAY 2019 TESTING**

30. On June 14, 2019, as a result of the elevated lead levels found during the May 2019 Testing, Aqua, on its own, issued a "do not consume" notice to all of the Village's residents. Pursuant to this notice, Village residents were instructed not to consume water from their tap until the notice is lifted.

31. On or about June 14, 2019, Aqua started adding a new blended phosphate, comprised primarily of orthophosphate, to the water provided to the Village's residents. The new blended phosphate was introduced, in part, to attempt to re-establish a protective scale on plumbing and solder, thereby preventing lead in the pipe solder or other sources from further leaching into the water supply.

32. Beginning on or about June 14, 2019, Aqua began testing water for lead on a weekly basis from approximately 42 separate residential locations within the Village. Beginning in mid-July 2019, Aqua increased the number of sampling locations in the Village to more than 70 homes. Sample results received as recently as July 16, 2019 continue to show the presence of lead exceeding the 15 ug/L action level for lead in drinking water at the 90<sup>th</sup> percentile of samples collected, with lead levels being detected as high as 3900 ug/L.

33. On July 1, 2019, Aqua notified the Illinois EPA that six sampling locations used in the August 2018 Testing should be deactivated because those residences were constructed after 1990 and could not be used as representative sampling locations. When a sampling location is deactivated, all samples collected from those locations are deemed to be invalid. Accordingly, on July 2, 2019, Illinois EPA retroactively recalculated the 90<sup>th</sup> percentile lead concentration for the August 2018 Testing using the remaining valid samples. The recalculated 90<sup>th</sup> percentile lead concentration for the August 2018 Testing was determined to be 17 ug/L, which exceeded the

action level for lead.

34. On or about July 29, 2019, Aqua, on its own, lifted the “do not consume” notice and replaced it with a lead advisory. At the time of the change to a lead advisory, approximately 1,600 homes within the Village had not yet been removed from the “do not consume” notice.

**E. AQUA’S ALLEGED VIOLATION OF THE “ASSUREDLY SAFE” WATER REQUIREMENT**

35. Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), provides, in pertinent part, as follows:

a) No person shall:

\* \* \*

2) Violate regulations or standards adopted by the Agency pursuant to Section 15(b) of this Act or by the Board under this Act;

36. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

37. Aqua, an Illinois corporation, is a “person,” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

38. Prior to July 26, 2019, Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101, provided as follows:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act [415 ILCS 5] (Act), the Pollution Control Board (Board) Rules, and the Safe Drinking Water Act (42 U.S.C. 300f et seq.) continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics

for ordinary domestic consumption.

Effective July 26, 2019, Section 601.10 of the Board PWS Regulations, 35 Ill. Adm.

Code 601.101 now reads as follows:

Owners and official custodians of a public water supply in the State of Illinois must provide, under the Act, Board Rules, and the Safe Drinking Water Act (42 USC 300f et seq.), continuous operation and maintenance of public water supply facilities to assure that the water is safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

39. Section 3.365 of the Act, 415 ILCS 5/3.365 (2018), provides as follows:

Public water supply. "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply".

40. Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101, incorporates Section 3.365 of the Act's definition for "Public water supply."

41. Aqua's Public Water System is a "public water supply," as that term is defined in Section 3.365 of the Act, 415 ILCS 5/3.365 (2018), and Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101.

42. Aqua is the owner and operator of a PWS, specifically, the Public Water System that provides drinking water to Village residents and customers.

43. At various times relevant to this Complaint, continuing up through the date of its filing, Aqua caused a change in water chemistry of the Public Water System by switching the Village's water source and adding the blended phosphate to the Village's drinking water. Aqua's

actions resulted in an adverse reaction that removed protective scale from residential plumbing in the Public Water System, and caused lead to leach out of solder and other plumbing/piping materials, such that the lead could and did enter into the water distributed to Aqua's customers, namely the Village's residents. As such, Aqua caused the exceedance of the action level of 15 ug/L for lead in the Public Water System.

44. Exposure to lead is detrimental to human health, can cause behavior and learning problems, such as lower IQ and hyperactivity in children, and can adversely impact the functions of the cardiovascular and reproductive systems in adults. The release of lead into the drinking water, caused by Aqua, is a threat to human health.

45. As a result of Aqua's actions which caused the release of lead from in-home plumbing/piping into the Public Water System, the Village's drinking water is not "assuredly safe" in quality for ordinary domestic consumption.

46. By causing and allowing the continued distribution of water that is not assuredly safe in quality, Aqua has violated Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101.

47. By violating Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101, Aqua violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018).

48. Violations of the pertinent statutes and regulations will continue unless and until this Court grants equitable relief in the form of a preliminary injunction and, after a trial, a permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court enter an order granting a preliminary injunction and, after a trial, a permanent injunction, in favor of Plaintiff and against Defendant, AQUA ILLINOIS, INC., on Count I:

1. Finding that the Defendant has violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101;
2. Enjoining the Defendant from further violations of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101;
3. Ordering the Defendant to immediately take all necessary corrective action that will result in a final and permanent abatement of violations of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101, including, without limitation, providing an alternative drinking water source to the residents of the Village that is assuredly safe in quality, and/or providing new faucets or filters that remove lead from the drinking water;
4. Assessing against the Defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2), and Section 601.101 of the Board PWS Regulations, 35 Ill. Adm. Code 601.101, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. Ordering the Defendant to pay all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), including expert witness, consultant and attorney fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Court deems appropriate and just.

**COUNT II**

**VIOLATION OF DRINKING WATER MONITORING SITE PLAN AND SAMPLING REQUIREMENTS**

1-42. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 42 of Count I as Paragraphs 1 through 42 of this Count II.

43. Section 19 of the Act, 415 ILCS 5/19 (2018), provides as follows:

Owners or official custodians of public water supplies shall submit such samples of water for analysis and such reports of operation pertaining to the sanitary quality, mineral quality, or adequacy of such supplies as may be requested by the Agency. Such samples and reports shall be submitted within 15 days after demand by the Agency.

44. Section 611.350 of the Board PWS Regulations, 35 Ill. Adm. Code 611.350, provides, in pertinent part, as follows:

a) Applicability and Scope.

1) Applicability. The requirements of this Subpart G constitute national primary drinking water regulations for lead and copper. This Subpart G applies to all community water systems (CWSs) and non-transient, non-community water systems (NTNCWSs).

2) Scope. This Subpart G establishes a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

45. Section 611.101 of the Board PWS Regulations, 35 Ill. Adm. Code 611.101, contains the following definition:

“Community water system” or “CWS” means a public water system (PWS) that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

BOARD NOTE: This definition differs slightly from that of Section 3.145 of the Act.

46. Aqua's Public Water System, which provides water to the Village's residents, is a

“Community water system” within the meaning of Section 611.101 of the Board PWS Regulations, 35 Ill. Adm. Code 611.101. Accordingly, the requirements of Subpart G of Part 611 of the Board PWS Regulations apply to Aqua and its operation of the Public Water System.

47. Section 611.356(a) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a), provides as follows:

- a) Sampling site location.
  - 1) Selecting a pool of targeted sampling sites.
    - A) By the applicable date for commencement of monitoring under subsection (d)(1), each supplier must complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this Section.
    - B) The pool of targeted sampling sites must be sufficiently large to ensure that the supplier can collect the number of lead and copper tap samples required by subsection (c).
    - C) The supplier must select the sites for collection of first draw samples from this pool of targeted sampling sites.
    - D) The supplier must not select as sampling sites any faucets that have point-of-use or point-of-entry treatment devices designed to remove or capable of removing inorganic contaminants.
  - 2) Materials evaluation.
    - A) A supplier must use the information on lead, copper, and galvanized steel collected pursuant to 40 CFR 141.42(d) (special monitoring for corrosivity characteristics) when conducting a materials evaluation.
    - B) When an evaluation of the information collected pursuant to 40 CFR 141.42(d) is insufficient to locate

the requisite number of lead and copper sampling sites that meet the targeting criteria in subsection (a), the supplier must review the following sources of information in order to identify a sufficient number of sampling sites:

- i) All plumbing codes, permits, and records in the files of the building departments that indicate the plumbing materials that are installed within publicly- and privately-owned structures connected to the distribution system;
  - ii) All inspections and records of the distribution system that indicate the material composition of the service connections which connect a structure to the distribution system;
  - iii) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations; and
  - iv) The supplier must seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities).
- 3) Tiers of sampling sites. Suppliers must categorize the sampling sites within their pool according to the following tiers:
- A) CWS Tier 1 sampling sites. "CWS Tier 1 sampling sites" must include the following single-family structures:
    - i) Those that contain copper pipes with lead solder installed after 1982 or which contain lead pipes; or
    - ii) Those that are served by a lead service line.

BOARD NOTE: Subsection (a)(3)(A) was derived

from segments of 40 CFR 141.86(a)(3) (2016). This allows the pool of CWS tier 1 sampling sites to consist exclusively of structures served by lead service lines.

- B) CWS Tier 2 sampling sites. "CWS Tier 2 sampling sites" must include the following buildings, including multiple-family structures:
  - i) Those that contain copper pipes with lead solder installed after 1982 or which contain lead pipes; or
  - ii) Those that are served by a lead service line.

BOARD NOTE: Subsection (a)(3)(B) was derived from segments of 40 CFR 141.86(a)(4) (2016). This allows the pool of CWS tier 2 sampling sites to consist exclusively of structures served by lead service lines.

- C) CWS Tier 3 sampling sites. "CWS Tier 3 sampling sites" must include the following single-family structures: those that contain copper pipes with lead solder installed before 1983.

BOARD NOTE: Subsection (a)(3)(C) was derived from segments of 40 CFR 141.86(a)(5) (2016).

\* \* \* \*

- 4) Selection of sampling sites. Suppliers must select sampling sites for their sampling pool as follows:
  - A) CWS Suppliers. CWS suppliers must use CWS tier 1 sampling sites, except that the supplier may include CWS tier 2 or CWS tier 3 sampling sites in its sampling pool as follows:
    - i) If multiple-family residences comprise at least 20 percent of the structures served by a supplier, the supplier may use CWS tier 2 sampling sites in its sampling pool; or

BOARD NOTE: Subsection (a)(4)(A)(i) was derived from a segment of 40 CFR

141.86(a)(3)(ii) (2016).

- ii) If the CWS supplier has an insufficient number of CWS tier 1 sampling sites on its distribution system, the supplier may use CWS tier 2 sampling sites in its sampling pool; or

BOARD NOTE: Subsection (a)(4)(A)(ii) was derived from a segment of 40 CFR 141.86(a)(4) (2016).

- iii) If the CWS supplier has an insufficient number of CWS tier 1 and CWS tier 2 sampling sites on its distribution system, the supplier may complete its sampling pool with CWS tier 3 sampling sites.

BOARD NOTE: Subsection (a)(4)(A)(iii) was derived from a segment of 40 CFR 141.86(a)(5) (2016).

- iv) If the CWS supplier has an insufficient number of CWS tier 1 sampling sites, CWS tier 2 sampling sites, and CWS tier 3 sampling sites, the supplier must use those CWS tier 1 sampling sites, CWS tier 2 sampling sites, and CWS tier 3 sampling sites that it has and complete its sampling pool with representative sites throughout its distribution system for the balance of its sampling sites. For the purpose of this subsection (a)(4)(A)(iv), a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

BOARD NOTE: Subsection (a)(4)(A)(iv) was derived from segments of 40 CFR 141.86(a)(5) (2016).

48. Section 611.356(c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(c), provides, in pertinent part, as follows:

- c) Number of samples.

- 1) Suppliers must collect at least one sample from the number of sites listed in the first column of Table D of this Part (labelled "standard monitoring") during each six-month monitoring period specified in subsection (d).

49. Table D of Part 611, 35 Ill. Adm. Code 611. Table D, provides, in pertinent part, as follows:

**Section 611. TABLE D Number of Lead and Copper Monitoring Sites**

System Size (Persons Served)	Number of Sites (Standard Monitoring)	Number of Sites (Reduced Monitoring)
More than 100,000	100	50
10,001-100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
100 or fewer	5	5

50. Because the total number of persons served in the Public Water System is between 3,301 and 10,000, Aqua is required to have 40 monitoring sites for each compliance sampling event.

51. Section 611.356(f) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(f), provides as follows:

Invalidation of lead or copper tap water samples. A sample invalidated under this subsection does not count toward determining lead or copper 90th percentile levels under Section 611.350(c)(3) or toward meeting the minimum monitoring requirements of subsection (c).

- 1) The Agency must invalidate a lead or copper tap water sample if it determines that one of the following conditions exists:

- A) The laboratory establishes that improper sample analysis caused erroneous results;
  - B) The sample was taken from a site that did not meet the site selection criteria of this Section;
  - C) The sample container was damaged in transit; or
  - D) There is substantial reason to believe that the sample was subject to tampering.
- 2) The supplier must report the results of all samples to the Agency and all supporting documentation for samples the supplier believes should be invalidated.
  - 3) To invalidate a sample under subsection (f)(1), the decision and the rationale for the decision must be documented in writing. The Agency may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.
  - 4) The water supplier must collect replacement samples for any samples invalidated under this Section if, after the invalidation of one or more samples, the supplier has too few samples to meet the minimum requirements of subsection (c). Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the Agency invalidates the sample or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period must not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement samples must be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

52. On July 1, 2019, Aqua advised Illinois EPA that six of the homes which had been included as test sites for the August 2018 Testing had been improperly included in that testing event and had been deactivated, as those homes had been constructed after 1990 and therefore could not be used as representative test locations.

53. As the result of the deactivation of the six homes from the August 2018 Testing,

the sample results from those homes were deemed to be invalid pursuant to the requirements of Section 611.356(f) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(f), and Aqua could not have used the sampling results from those homes to satisfy the testing requirements of Section 611.356(c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(c). As a result, Aqua did not adequately identify a pool of targeted sampling sites, as required by 611.356(a) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a).

54. On July 2, 2019, Illinois EPA recalculated the 90<sup>th</sup> percentile criteria for the August 2018 Testing event and determined that Aqua exceeded the 15 ug/L action level.

55. The recalculation showed that Aqua had not adequately identified a pool of targeted sampling sites for the August 2018 Testing and had not collected the requisite number of samples for this event, thereby violating Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c).

56. As a result of its violations of Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c), Aqua violated Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18(a)(2) and (19) (2018).

57. Violations of the pertinent statutes and regulations will continue unless and until this Court grants equitable relief in the form of a preliminary injunction and, after a trial, a permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court enter an order granting a preliminary injunction and, after a trial, a permanent injunction, in favor of Plaintiff and against Defendant, AQUA ILLINOIS, INC., on Count II:

1. Finding that the Defendant violated Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18 (a)(2) and 19 (2018), and Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill.

Adm. Code 611.356(a) and (c);

2. Enjoining the Defendant from further violations of Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18 (a)(2) and 19 (2018), and Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c);

3. Ordering the Defendant to immediately take all necessary corrective action that will result in a final and permanent abatement of violations of Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18 (a)(2) and 19 (2018), and Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c), including having a written sampling plan in place for all future compliance testing events;

4. Assessing against the Defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18 (a)(2) and 19 (2018), and Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c), and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

5. Ordering the Defendant to pay all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), including expert witness, consultant and attorney fees expended by the State in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

### **COUNT III**

#### **VIOLATION OF CONSTRUCTION PERMIT REQUIREMENTS**

1-42. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 42 of Count I as Paragraphs 1 through 42 of this Count III.

43. Section 15(a) of the Act, 415 ILCS 5/15(a) (2018), provides as follows:

Plans and specifications; demonstration of capability; record retention.

(a) Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

44. Section 18(a)(3) of the Act, 415 ILCS 5/18(a)(3) (2018), provides as follows:

a) No person shall:

\* \* \*

31) Construct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such a permit.

45. Section 602.101 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, provides as follows:

The purpose of this Part is to establish and enforce minimum standards for the permitting of community water supplies. The definitions in 35 Ill. Adm. Code 601.105 apply to this Part.

a) No person shall construct, install, or operate a community water supply without a permit granted by the Agency. [415 ILCS 5/18(a)(3)]

b) Owners are required to submit plans and specifications to the Agency and obtain written approval before construction, installation, changes or additions to a community water supply, except as provided in Section 602.104. [415 ILCS 5/15(a)].  
(Emphasis in original.)

46. Section 602.116 of the Board PWS Regulations, 35 Ill. Adm. Code 602.116, provides as follows:

If any portion of a community water supply has been constructed without a construction permit as required by Section 602.101, or an emergency permit

issued pursuant to Section 602.104, the community water supply must submit to the Agency as-built plans and specifications and a construction permit application. As-built plans and specifications must be prepared by a qualified person as described in Section 602.105(a)(4). All plans and specifications submitted to the Agency under this Section must be clearly marked "as-built" or "record drawings". Any deficiencies requiring correction, as determined by the Agency, must be corrected within a time limit set by the Agency. Submission of as-built plans and the correction of any deficiencies does not relieve the owner or official custodian from any liability for construction without a permit.

47. Section 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.200, provides, in pertinent part, as follows:

- a) A person must not cause or allow the construction of any new community water supply installation, or cause or allow the change of or addition to any existing community water supply, without a construction permit issued by the Agency.
- b) Construction permits must be obtained by the owner or official custodian of a community water supply:
  - 1) prior to beginning construction of any proposed community water supply;
  - 2) prior to all alterations, changes or additions to an existing community water supply that may affect the sanitary quality, mineral quality or adequacy of the community water supply;
  - 3) prior to adding new chemicals to the treatment process or changing the points of chemical application; . . . .

48. Aqua was required to submit plans and specifications to Illinois EPA prior to its construction of improvements to the Central Avenue Booster Station which would allow it to introduce blended phosphate into the Public Water System..

49. By failing to submit the requisite plans and specifications to Illinois EPA for construction of improvements to the Central Avenue Booster Station which would allow it to introduce blended phosphate into the Public Water System and, further, to obtain Illinois EPA's

approval for this construction, Aqua thereby violated Section 15(a) of the Act, 415 ILCS 5/15(a) (2018).

50. Aqua was required to apply for and obtain a construction permit from Illinois EPA, for its addition of the blended phosphate at the Central Avenue Booster Station, prior to constructing the improvements at the booster station and introducing the aforementioned chemicals into the Public Water System.

51. By failing to apply for and obtain a construction permit before constructing the improvements at the Central Avenue Booster Station and introducing the blended phosphate into the Public Water System at the Central Avenue Booster Station, Aqua violated Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200.

52. By violating Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200, Aqua thereby violated Sections 15(a) and 18(a)(2) and (3) of the Act, 415 ILCS 5/15 and 18(a)(2) and (3) (2018).

53. Violations of the pertinent statutes and regulations will continue unless and until this Court grants equitable relief in the form of a preliminary injunction and, after a trial, a permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court enter an order granting a preliminary injunction and, after a trial, a permanent injunction, in favor of Plaintiff and against Defendant, AQUA ILLINOIS, INC., on Count III:

1. Finding that the Defendant violated Sections 15(a) and 18(a)(2) and (3) of the Act, 415 ILCS 5/15(a) and 18(a)(2) and (3) (2018), and Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200;

2. Enjoining the Defendant from further violations of Sections 15(a) and 18(a)(2) and (3) of the Act, 415 ILCS 5/15(a) and 18(a)(2) and (3) (2018), and Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200;

3. Ordering the Defendant to immediately take all necessary corrective action that will result in a final and permanent abatement of violations of Sections 15(a) and 18(a)(2) and (3) of the Act, 415 ILCS 5/15(a) and 18(a)(2) and (3) (2018), and Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200, including ensuring that it does not undertake any further actions which require obtaining a construction permit until such time as any necessary construction permit has first been issued by Illinois EPA to Aqua;

4. Assessing against the Defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Sections 15(a) and 18(a)(2) and (3) of the Act, 415 ILCS 5/15(a) and 18(a)(2) and (3) (2018), and Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

5. Ordering the Defendant to pay all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), including expert witness, consultant and attorney fees expended by the State in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

#### **COUNT IV**

#### **OPERATING PERMIT VIOLATIONS**

1-43. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 42 of Count I, and Paragraph 44 of Count III, as Paragraphs 1 through 43 of this Count IV.

44. Section 602.300 of the PWS Regulations, 35 Ill. Adm. Code 602.300, provides in pertinent part, as follows:

- a) No person shall cause or allow the use or operation of any new community water supply, or any new addition to an existing community water supply, for which a construction permit is required under this Part, without an operating permit issued by the Agency.
- b) The operating permit application must be filed with the Agency when construction is complete.

45. Aqua was required to have an operating permit issued by Illinois EPA prior to putting the newly constructed water transmission main into service in December 2017, whereby the Public Water System would then provide water to the Village from the Kankakee River, rather than from local groundwater wells.

46. Aqua was also required to have an operating permit issued by Illinois EPA prior to putting the Central Avenue Booster Station into service as the point at which Aqua introduced the blended phosphate into the Public Water System.

47. By failing to obtain an operating permit from Illinois EPA before (a) putting the newly constructed water transmission main into service switching the water source for the Public Water System and (b) beginning to use the Central Avenue Booster Station as the point of introduction for the blended phosphate into the Public Water System, Aqua violated Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300.

48. By violating Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300, Aqua violated Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(a)(2) and (3) (2018).

49. Violations of the pertinent statutes and regulations will continue unless and until this Court grants equitable relief in the form of a preliminary injunction and, after a trial, a permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court enter an order granting a preliminary injunction and, after a trial, a permanent injunction, in favor of Plaintiff and against Defendant, AQUA ILLINOIS, INC., on Count IV:

1. Finding that the Defendant violated Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(2) and (3) (2018), and Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300;

2. Enjoining the Defendant from further violations of Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(2) and (3) (2018), and Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300;

3. Ordering the Defendant to immediately take all necessary corrective action that will result in a final and permanent abatement of violations of Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(2) and (3) (2018), and Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300, including ensuring that it does not undertake any further actions which require obtaining an operating permit until such time as any necessary operating permit has first been issued by Illinois EPA to Aqua;

4. Assessing against the Defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(2) and (3) (2018); and Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

5. Ordering the Defendant to pay all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), including expert witness, consultant and attorney fees expended by the State in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

## COUNT V

### COMMON LAW PUBLIC NUISANCE

1. This Count is brought on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, and James W. Glasgow, State's Attorney for Will County, Illinois, on their own motion.

2-34. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 34 of Count I as paragraphs 1 through 34 of this Count V.

35. The Illinois Constitution provides the People of the State of Illinois a common right "to a healthful environment." Ill. Const. art. XI, sec. 1 (1970).

36. Aqua, by its actions, has caused and continues to cause an unreasonable and substantial prejudice to the public health and welfare and the environment, to wit, has, through its actions, caused the release of lead into the Public Water System, thereby threatening harm to Village residents and interfering with their use and enjoyment of the water.

37. As a consequence of its actions as alleged herein, Aqua has created and maintained a public nuisance at common law.

38. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured, and violations of the applicable and pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, AQUA ILLINOIS, INC., with respect to Count V.

1. Finding that Aqua has created and maintained a common law public nuisance through the Public Water System;
2. Enjoining Aqua from maintaining a common law public nuisance through the Public Water System;
3. Ordering Aqua to immediately undertake the necessary action that will result in a final and permanent abatement of the common law public nuisance;
4. Granting such other relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:



ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General

OF COUNSEL:

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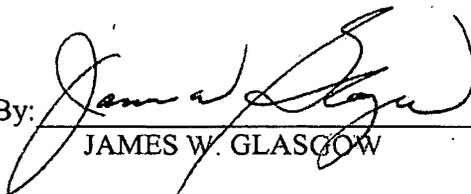
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PEOPLE OF THE STATE OF ILLINOIS ex rel. KWAME RAOUL, Attorney General of the  
State of Illinois, and JAMES W. GLASGOW, State's Attorney for Will County, Illinois v.  
AQUA ILLINOIS, INC.

ex rel. JAMES W. GLASGOW  
State's Attorney for Will County

By:   
JAMES W. GLASGOW

OF COUNSEL:

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**EXHIBIT C**

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS**

JOANN HENDERSON, WILLIAM	)	
HENDERSON, JOYCE BISHOP,	)	
MARNITA BROWN, LIONELL CLARK,	)	
WILLIAM FREEMAN, LINDA JACOBS,	)	No. 19 CH 1852
GREGORY ROGERS, and LISA	)	
WELCHER-SILMON, individually, and	)	
on behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AQUA ILLINOIS, INC., an Illinois	)	
corporation,	)	
	)	
Defendant.	)	
	)	

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**AMENDED CLASS ACTION COMPLAINT**

Plaintiffs JOANN HENDERSON, WILLIAM HENDERSON, JOYCE BISHOP, MARNITA BROWN, LIONELL CLARK, WILLIAM FREEMAN, LINDA JACOBS, GREGORY ROGERS, and LISA WELCHER-SILMON (collectively, "Plaintiffs"), individually, and on behalf of all others similarly situated, by and through counsel at ZIMMERMAN LAW OFFICES, P.C., bring this action against Defendant AQUA ILLINOIS, INC. ("Defendant" or "Aqua"), as follows:

**Introduction**

1. This Class Action Complaint arises out of the contamination of the water supply of Plaintiffs and thousands of other residents and entities in the village of University Park, Illinois

(the “Village”) by Aqua, which owns and operates the public water system in the Village (the “Public Water System”).<sup>1</sup>

2. In the summer of 2017, Aqua began adding a different chemical mix to the Public Water System purportedly to remove iron or rust from the water.

3. Aqua constructed improvements to the Central Avenue Boosting Station in order to withdraw water from the Kankakee River. Aqua introduced its new chemical mix into the Public Water System at the Central Avenue Boosting Station.

4. On information and belief, as early as December 9, 2017, Aqua switched the source of the Public Water System from local groundwater wells to the Kankakee River.

5. The introduction by Aqua of the new chemical mix into the Public Water System combined with the chemistry of the water from the Kankakee River resulted in the removal of a protective layer in plumbing throughout the Village, causing lead to leach into the water delivered to Plaintiffs and Class members via the Public Water System.

6. Plaintiffs, on behalf of themselves and all Class members, seek damages as a result of Aqua distributing water to them that was not assuredly safe and was contaminated with unsafe levels of lead as a result of Aqua’s actions and inactions.

**Parties**

7. Plaintiffs Joann Henderson and William Henderson are residents and citizens of Illinois, residing in the Village.

8. Plaintiff Joyce Bishop is a resident and citizen of Illinois, residing in the Village.

9. Plaintiff Marnita Brown is a resident and citizen of Illinois, residing in the Village.

10. Plaintiff Lionell Clark is a resident and citizen of Illinois, residing in the Village.

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<sup>1</sup> The water supplied by the Public Water System shall be hereinafter referred to as the “Public Water Supply.”

11. Plaintiff William Freeman is a resident and citizen of Illinois, residing in the Village.

12. Plaintiff Linda Jacobs is a resident and citizen of Illinois, residing in the Village.

13. Plaintiff Gregory Rogers is a resident and citizen of Illinois, residing in the Village.

14. Plaintiff Lisa Welcher-Silmon is a resident and citizen of Illinois, residing in the Village.

15. Defendant Aqua Illinois, Inc. is an Illinois corporation with its principal place of business in Kankakee, Illinois.

#### **Jurisdiction and Venue**

16. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of business within this state), 2-209(a)(2) (commission of a tortious act within this state); 2-209(a)(12) (corporation organized under the laws of this state or having its principal place of business in this state), and 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution or the Constitution of the United States). 735 ILCS 5/2-209.

17. Venue is proper in this County because Aqua's facilities and the affected water pipes are located in Will County, and Aqua's misconduct out of which this Complaint's causes of action arose occurred in Will County. 735 ILCS 5/2-101(2).

#### **Factual Allegations**

18. The Illinois Environmental Protection Agency ("IEPA") has declared the Village an environmental justice concern because of the percentage of low-income and/or minority residents in the Village.

19. On March 27, 2013, Aqua filed a petition with the Illinois Commerce Commission (“ICC”) seeking permission to switch the source of the water supply for the Village from local groundwater wells to the Kankakee River. On July 30, 2014, the ICC approved the petition.

20. On December 23, 2015, the IEPA issued a Construction Permit to Aqua that authorized Aqua to proceed with the construction and/or installation of a new water transmission main for transporting Kankakee River water to the Public Water System.

21. In the summer of 2017, Aqua began introducing into the Public Water System a corrosion treatment product purportedly to remove rust or iron from the water. On information and belief, Aqua used a blended phosphate mix comprised primarily of polyphosphate.

22. On or about December 22, 2017, Aqua submitted an application for an operating permit for the new water transmission main.

23. On information and belief, as early as December 9, 2017, Aqua began using the new water transmission main and provided Kankakee River water to the Village and its residents and entities, including Plaintiffs and Class members. However, prior to switching to a new water supply, Aqua negligently and recklessly failed to ensure that lead solids and scales coating the inside of the pipes would not get disrupted and release into the Plaintiffs’ and Class members’ water by, *inter alia*, cleaning the pipes with hydromechanical flushing.

24. On March 27, 2018, the IEPA issued an operating permit for the new water transmission main, which was issued months after Aqua began using the new water transmission main.

25. In August 2018—over a year after switching corrosion treatment products to the blended phosphate mix and introducing this chemical mix into the Public Water System—Aqua performed compliance lead sampling on the water.

26. According to United States Environmental Protection Agency, lead is highly toxic and exposure can be dangerous, especially for children six or younger, who are particularly at risk when exposed to lead. Even low levels of lead in the blood of children can cause irreversible behavioral problems, learning disabilities and impaired growth. Very high blood levels can cause severe neurological problems such as comas, convulsions and death.<sup>2</sup>

27. The Illinois Pollution Control Board's ("Board") Public Water Supply Regulations ("PWS Regulations") provides that the "lead action level" is exceeded in drinking water if the 90th percentile lead level is greater than 0.015 mg/ℓ or 15 ug/ℓ. 35 Ill.Adm.Code 611.350(c)(1). Compliance with the lead action level is determined at the 90th percentile concentration of all samples collected, or in other words, no more than 10 percent of the samples collected can exceed the lead action level. 35 Ill.Adm.Code 611.350(c)(3). The lead action level is triggered when the concentration of lead in drinking water in more than 10 percent of the samples collected exceeds 15 ug/ℓ.

28. The August 2018 lead sampling on the water Aqua supplied to the homes in the Village showed that the 90th percentile lead concentration was 15 ug/ℓ, which was right at, but not exceeding, the lead action level. Several individual locations showed increased lead levels compared to prior lead levels before switching the water supply to the Kankakee River and adding the new chemical mix to the Public Water System.

29. Despite these elevated lead levels in the Public Water System, Aqua did not re-test the water lead levels again until late-May 2019.

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<sup>2</sup> See <https://www.epa.gov/schools-healthy-buildings/lead-concerns-during-renovations-healthy-school-environment>

30. The May 2019 testing conducted by Aqua showed hazardous levels of lead detected in the water coming from the Public Water System. Specifically, this testing showed lead levels in the tested water ranging from less than 1.0 ug/l to 1,700 ug/l.

31. Based on the May 2019 test results, the 90th percentile lead concentration was 131 ug/l, which is well above the lead action level of 15 ug/l.

32. On June 14, 2019, Aqua issued a “do not consume” notice that warned all of the Village residents and others to not drink the water. Pursuant to this notice, Village residents and others (including Plaintiffs and Class members) were instructed not to consume water from their faucets until the notice was lifted, and instead, Aqua advised them to drink and use bottled water and/or water from filtered pitchers.

33. On information and belief, on or about June 15, 2019, in an attempt to re-establish a protective scale on plumbing and solder to prevent the leaching of lead into the water supply, Aqua started adding a new blended phosphate—comprised primarily of orthophosphate—to the water provided to the Village’s residents and entities.

34. In July 2019, Aqua tested the lead levels in water that it supplied to the Village residences. On information and belief, Aqua’s July 2019 water test results of more than 70 homes in the village showed the presence of lead exceeding the 15 ug/l action level for lead in drinking water at the 90th percentile of samples collected, with lead levels being detected as high as 3,900 ug/l.

35. On information and belief, on July 1, 2019, Aqua notified the IEPA that six sampling locations used in the August 2018 testing should be deactivated because those homes were constructed after 1990 and could not be used as representative sampling locations. Once the homes constructed after 1990 are excluded from the calculation, the 90th percentile lead

concentration in the August 2018 testing was determined to be 17 ug/ℓ, which exceeded the lead action level.

36. On or about July 29, 2019, Aqua lifted the June 14, 2019 “do not consume” notice and replaced it with a lead advisory. On information and belief, at the time of the change to the lead advisory, approximately 1,600 homes within the Village had not yet been removed from the “do not consume” notice.

**Aqua’s Violation of the Illinois Environmental Protection Act**

37. Section 18(a) of the Illinois Environmental Protection Act (“Act”) provides, in relevant part, as follows:

- (a) No person shall:
  - (1) Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or
  - (2) Violate regulations or standards adopted by the Agency pursuant to Section 15(b) of this Act or by the Board under this Act; . . .

415 ILCS 5/18(a).

38. Aqua is an Illinois corporation and, thus, is a “person” as defined by Section 3.315 of the Act. 415 ILCS 5/3.315.

39. Prior to July 26, 2019, Section 601.101 of the Board’s PWS Regulations provided, as follows:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act [415 ILCS 5] (Act), the Pollution Control Board (Board) Rules, and the Safe Drinking Water Act (42 U.S.C. 300f, *et seq.*), continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

Section 601.101 of the Board's PWS Regulations now states, as follows:

Owners and official custodians of a public water supply in the State of Illinois must provide, under the Act, Board Rules, and the Safe Drinking Water Act (42 U.S.C. 300f, *et seq.*), continuous operation and maintenance of public water supply facilities to assure that the water is safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

35 Ill.Adm.Code 601.101, effective July 26, 2019.

40. The Act defines "public water supply" as:

all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply".

415 ILCS 5/3.365.

41. Section 601.101 of the Board's PWS Regulations incorporates Section 3.365 of the Act's definition for "public water supply." 35 Ill.Adm.Code 601.101.

42. Pursuant to the Act and the Board's PWS Regulations, Aqua's Public Water System is a "public water supply." 415 ILCS 5/3.365; 35 Ill.Adm.Code 601.101.

43. Aqua is the owner and operator of a "public water supply," namely the Village's Public Water System.

44. On information and belief, Aqua caused a change in the water chemistry of the Public Water Supply when it began introducing into the Public Water System at the Central Avenue Booster Station a corrosion treatment product consisting of blended phosphate to purportedly remove rust or iron from the Public Water Supply. This change caused an adverse reaction that removed protective scale from plumbing in the Public Water System and caused lead

to leach out of solder and other plumbing/piping materials, such that the lead could and did enter into the water distributed by Aqua to Village residents and entities, including Plaintiffs and Class members. Aqua's actions resulted in the presence of lead exceeding the 15 ug/l action level for lead in drinking water at the 90th percentile of samples collected.

45. Aqua's actions resulted in the Public Water Supply to Plaintiff and Class members to not be "assuredly safe" in quality for ordinary domestic consumption, in violation of Section 601.101 of the Board's PWS Regulations, which in turn violates Section 18(a)(2) of the Act. 35 Ill.Adm.Code 601.101; 415 ILCS 5/18(a)(2).

**Aqua's Violation of Sampling Requirements**

46. Owners or official custodians of public water supplies are required to submit samples of water for analysis, and reports of operation pertaining to the sanitary quality, mineral quality, or adequacy of such water supplies. 415 ILCS 5/19.

47. Aqua was required to select a pool of targeted sampling sites in the Village and categorize them into tiers. 35 Ill.Adm.Code 611.356(a).

48. Because the total number of residents and entities served by Aqua in the Village is between 3,301 and 10,000, Aqua is required to have 40 monitoring sites for each compliance sampling event. 35 Ill.Adm.Code 611, Table D.

49. As set forth above, on information and belief, on July 1, 2019, Aqua notified the IEPA that six sampling locations used in the August 2018 testing should be deactivated because those homes were constructed after 1990 and could not be used as representative sampling locations.

50. Because the August 2018 sample results from those homes were deemed invalid pursuant to Section 611.356(f), Aqua could not have used the sampling results from those homes

to satisfy the required testing and, thus, Aqua did not adequately identify a pool of targeted sampling sites.

51. As a result, Aqua violated Sections 611.356(a) and (c) of the Board's PWS Regulations, which in turn violated Sections 18(a)(2) and 19 of the Act.

52. Furthermore, the recalculation of the 90th percentile lead concentration in the August 2018 testing without those six sampling locations was determined to be 17 ug/l, which exceeded the lead action level.

**Aqua's Violation of Construction Permit Requirements**

53. Pursuant to the Act and the Board's PWS Regulations, Aqua was required to submit plans and specifications to the IEPA and obtain permits prior to its construction of improvements to the Central Avenue Booster Station and the introduction of new chemicals to the treatment process at the Central Avenue Booster Station.

54. Section 15(a) of the Act provides in relevant part, as follows:

Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

415 ILCS 5/15(a).

55. The Act further provides that no person shall "[c]onstruct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such a permit." 415 ILCS 5/18(a)(3).

56. The Board has adopted the foregoing Act requirements in the Board's PWS Regulations. 35 Ill.Adm.Code 602.101.

57. The Board's PWS Regulations also provide that if any portion of a community water supply has been constructed without the required permit or an emergency permit, the "as-built" or "record drawings" must be submitted to the Agency but the "[s]ubmission of as-built plans and the correction of any deficiencies does not relieve the owner or official custodian from any liability for construction without a permit." 35 Ill.Adm.Code 602.116.

58. The Board's PWS Regulations set forth when construction permits must be obtained by the owner or official custodian of a community water supply:

- 1) prior to beginning construction of any proposed community water supply;
- 2) prior to all alterations, changes or additions to an existing community water supply that may affect the sanitary quality, mineral quality or adequacy of the community water supply;
- 3) prior to adding new chemicals to the treatment process or changing the points of chemical application; . . .

35 Ill.Adm.Code 602.200(b).

59. Aqua failed to submit the requisite plans and specifications to the IEPA for construction of improvements to the Central Avenue Booster Station which would allow it to introduce blended phosphate into the Public Water System and, further, failed to obtain IEPA's approval and construction permit prior to Aqua's construction of improvements to the Central Avenue Booster Station.

60. Aqua's failures to submit the requisite plans and specifications and obtain the requisite construction permit violated Sections 602.101, 602.116, and 602.200 of the Board's PWS

Regulations, which in turn violated Sections 15(a) and 18(a)(2) and (3) of the Act. 35 Ill. Adm. Code 602.101, 602.116, and 602.200(b); 415 ILCS 5/15(a) and 18(a)(2) and (3).

### **Damages**

61. Plaintiffs and Class members were damaged in that they paid Aqua for water during the time that Aqua's actions and inactions resulted in the distribution of water that was not, and still is not, assuredly safe in quality for domestic consumption to Village residents and others. Additionally, Plaintiffs and Class members have also expended time and money to respond to the Public Water System not being assuredly safe, including incurring out-of-pocket costs for bottled water, filters for water pitchers, and filtration systems, and loss of income, among other things.

62. The presence and potential for elevated levels of lead in the water from the Public Water System has threatened the health of Plaintiffs and Class members, and exposes them to injury and the fear of future injury, including the risk of increased and irreversible health impacts, especially to young children.

63. Aqua's actions and inactions complained of herein have disrupted, and continue to disrupt, the lives of Plaintiffs and Class members on a daily basis, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort, as well as having to spend time dealing with the water crisis.

### **Class Allegations**

64. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801, on behalf of a class of similarly situated individuals ("the Class"), defined as follows:

All persons and entities in the Village of University Park, Illinois who obtained water from the Public Water System owned and operated by Aqua Illinois, Inc. and were under a "do not consume" notice or "lead advisory" at any time during the Class Period.

Excluded from the Class are: (1) Defendant, Defendant's agents; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person and entity who executes and files a timely request for exclusion from the Class; (4) any persons and entities who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person and entity.

65. **Class Period:** The exact time period for the Class Period will be determined through discovery, but is believed to begin in 2017 when Aqua changed its water treatment products for the removal of iron and rust and began using Kankakee River water for the Public Water System, and continues to the present.

66. **Numerosity:** Upon information and belief, the Class is comprised of thousands of individuals and entities, and is so numerous that joinder of all members of the Class is impracticable. While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiffs believe there are thousands of Class members based on the fact that the U.S. Census Bureau recorded a population of 7,129 in University Park, Illinois in the 2010 census.<sup>3</sup> Class members can be easily identified through Defendant's records or by other means.

67. **Commonality and Predominance:** There are several questions of law and fact common to the claims of the Plaintiffs and members of the putative Class, which predominate over any individual issues, including:

- a. Whether Plaintiffs and Class members paid for water from Aqua's Public Water System that was not assuredly safe in quality for consumption;
- b. Whether Plaintiffs and Class members consumed water from Aqua's Public Water System that was not assuredly safe in quality for consumption;

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<sup>3</sup> See [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml)

- c. Whether the Public Water System water sold and/or distributed by Aqua caused lead in the pipe solder or other sources to leach into Plaintiffs' and Class members' water supply;
- d. Whether Aqua failed to timely disclose to Plaintiffs and Class members the presence of lead in their tap water that exceeded the lead action level;
- e. Whether Aqua is negligent for said conduct under Illinois law;
- f. Whether Aqua's actions and inactions in the sale and distribution of water that was not assuredly safe in quality for consumption breached its duties of care to Plaintiffs and the Class;
- g. Whether Aqua's actions and inactions in the sale and distribution of water that exceeded the lead action level breached its duties of care to Plaintiffs and the Class;
- h. Whether Aqua exercised ordinary care in operating the Public Water System and providing the Public Water Supply to Plaintiffs and the Class;
- i. Whether Aqua's actions and inactions constitute willful and wanton conduct, such that punitive damages should be assessed against Aqua;
- j. Whether Aqua's actions and inactions substantially interfere with Plaintiffs' and Class members' reasonable use and enjoyment of their homes and commercial properties; and
- k. Whether, and to what extent, Plaintiffs and members of the Class were damaged as a result of Aqua's conduct alleged herein.

68. **Typicality:** Plaintiffs' claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues. Plaintiffs and each of the Class members received water from Aqua and are affected by the same conduct of Aqua alleged herein. Aqua engaged in uniform conduct with respect to operating the Public Water System and providing the Public Water Supply to Plaintiffs and all Class members.

69. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.

70. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiffs' and Class members' claims are manageable.

71. Unless a class is certified, Defendant will retain monies received as a result of its conduct that was wrongfully taken from Plaintiffs and Class members.

**COUNT I**  
**(Nuisance)**

72. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 71 as paragraph 72 of this Count I, as though fully set forth herein.

73. A public nuisance is defined as the “doing of or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public.” *E.g., Burns v. Simon Properties Group, LLP*, 2013 IL App (5th) 120325, ¶ 6. In contrast, “a private nuisance is a substantial invasion of another’s interest in the use and enjoyment of his or her land.” *E.g., Dobbs v. Wiggins*, 401 Ill.App.3d 367, 375 (5th Dist. 2010). “A private nuisance, however, that interferes with public rights can also constitute a public nuisance.” *Chicago Nat. League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 365 (1985); *City of Chicago v. Am. Cyanamid Co.*, 355 Ill.App.3d 209, 215 (1st Dist. 2005).

74. Aqua’s actions and inactions constitute both public and private nuisance, as (1) Plaintiffs’ and Class members’ right to access the Public Water Supply is a public right because the Public Water Supply is an indivisible resource shared by the public at large, and (2) Plaintiffs’ and Class members’ ability to use and consume water from the Public Water Supply is crucial to their use and enjoyment of their property. *See, e.g., City of Chicago*, 355 Ill.App.3d at 214-15

75. Aqua's actions and inactions resulted in the Public Water Supply to not be "assuredly safe" in quality for ordinary domestic consumption. Aqua's actions and inactions injuriously affect the safety and health of the public, and cause substantial annoyance, inconvenience, and injury to the public, including Plaintiffs and Class members.

76. Aqua's actions and inactions resulted in lead leaching into the water it sold and supplied to Plaintiffs and Class members and interfered with their use and enjoyment of their properties. For example, pursuant to Aqua's "do not consume" notice to Plaintiffs and Class members, Plaintiffs and Class members could not drink or even brush their teeth with their tap water.

77. Aqua knew or should have known that its actions and inactions described herein would substantially interfere with Plaintiffs' and Class members' reasonable use and enjoyment of their properties.

78. As alleged above, Plaintiffs and Class members have incurred substantial damage as a result of Aqua's actions and inactions constituting a nuisance.

WHEREFORE, Plaintiffs request that this Court enter judgment in favor of Plaintiffs and the Class and against Defendant, and pray that the Court:

- A. certify this action as a Class action on behalf of the Class defined herein, appoint Plaintiffs as the Class representatives, and appoint Plaintiffs' counsel as counsel for the Class;
- B. award damages incurred by Plaintiffs and the Class against Defendant for all damages, including, but not limited to, out of pocket damages, loss of income, and discomfort, aggravation and annoyance;
- C. award Plaintiffs and the Class their attorney's fees and costs of suit, and such other and further relief as the Court deems just and proper.

**COUNT II**  
**(Negligence)**

79. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 71 as paragraph 79 of this Count II, as though fully set forth herein.

80. The Village's Public Water System and the Public Water Supply was in the exclusive control of Aqua.

81. Pursuant to Section 601.101 of the Board's PWS Regulations and common law, Aqua has a duty to provide water to Plaintiffs and Class members that is assuredly safe and would not cause lead to leach into Plaintiffs' and Class members' water.

82. Aqua breached its duty to Plaintiffs and Class members by its actions and inactions described herein that allowed lead to leach into Plaintiffs' and Class members' water.

83. If ordinary care was used, the lead would not have leached into Plaintiffs' and Class members' water.

84. Aqua breached its duty to Plaintiffs and Class members when, prior to switching to a new water supply, Aqua failed to ensure that lead solids and scales coating the inside of the pipes would not get disrupted and release into the Plaintiffs' and Class members' water by, *inter alia*, cleaning the pipes with hydromechanical flushing.

85. Aqua breached its duty to Plaintiffs and Class members when it failed to submit the required plans and specifications to the IEPA prior to its construction of improvements to the Central Avenue Booster Station, and when Aqua failed to obtain the IEPA's approval and permit prior to said construction.

86. Aqua also had a duty to promptly warn Plaintiffs and Class members of the leaching of lead or potential for leaching of lead into their water, and to promptly and effectively address and prevent the leaching of lead into Plaintiffs' and Class members' water.

87. Aqua breached its duty to warn Plaintiffs and Class members by its actions and inactions described herein, as it did not even conduct compliance lead water sampling until August 2018—over a year after switching corrosion treatment products to the blended phosphate mix and introducing this chemical mix into the Public Water System at the Central Avenue Booster Station—and, even then, Aqua failed to test the requisite number of sampling sites. The recalculation of the 90th percentile lead concentration in the August 2018 testing without the six excluded sampling locations was determined to be 17 ug/l, which exceeded the lead action level. Aqua did not issue a “do not consume” notice that advised all of the Village residents to not drink the water until June 14, 2019.

88. It was foreseeable that Aqua's actions and inactions as described herein would result in the leaching of lead or potential for leaching of lead into Plaintiffs' and Class members' water and supplying them with water that was not assuredly safe.

89. As a direct and proximate result of Aqua's actions and inactions, Plaintiffs and Class members have been damaged.

WHEREFORE, Plaintiffs request that this Court enter judgment in favor of Plaintiffs and the Class and against Defendant, and pray that the Court:

- A. certify this action as a Class action on behalf of the Class defined herein, appoint Plaintiffs as the Class representatives, and appoint Plaintiffs' counsel as counsel for the Class;
- B. award damages incurred by Plaintiffs and the Class against Defendant for all damages, including, but not limited to, out of pocket damages, loss of income, and discomfort, aggravation and annoyance;

- C. award Plaintiffs and the Class their attorney's fees and costs of suit, and such other and further relief as the Court deems just and proper.

**COUNT III**  
**(Trespass)**

90. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 71 as paragraph 90 of this Count III, as though fully set forth herein.

91. Plaintiffs and Class members reside/resided, or own/owned property, in the Village during the Class Period and obtain/obtained water in their homes or properties from the Public Water System owned and operated by Aqua.

92. As a direct and proximate result of Aqua's conduct, lead leached into the water supplied to Plaintiffs' and Class members' homes and properties.

93. Damages from the lead that trespasses and has trespassed onto Plaintiffs' and Class members' water supply in their homes and properties continues to accrue and will continue to accrue.

94. Aqua's ongoing trespasses onto Plaintiffs' and Class members' water supply in their homes and properties is intentional, willful and wanton, and/or negligent, and wrongful.

95. Aqua's ongoing trespasses onto Plaintiffs' and Class members' water supply in their homes and properties have interfered with Plaintiffs' and Class members' use and enjoyment of their property.

WHEREFORE, Plaintiffs request that this Court enter judgment in favor of Plaintiffs and the Class and against Defendant, and pray that the Court:

- A. certify this action as a Class action on behalf of the Class defined herein, appoint Plaintiffs as the Class representatives, and appoint Plaintiffs' counsel as counsel for the Class;

- B. award damages incurred by Plaintiffs and the Class against Defendant for all damages, including, but not limited to, out of pocket damages, loss of income, and discomfort, aggravation and annoyance;
- C. award Plaintiffs and the Class their attorney's fees and costs of suit, and such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all counts so triable.

Plaintiffs JOANN HENDERSON, WILLIAM HENDERSON, JOYCE BISHOP, MARNITA BROWN, LIONELL CLARK, WILLIAM FREEMAN, LINDA JACOBS, GREGORY ROGERS, and LISA WELCHER-SILMON, individually, and on behalf of all others similarly situated,

By: Thomas A. Zimmerman, Jr.

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Counsel for the Plaintiffs and Putative Class

**EXHIBIT D**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Rozita Arnold, Patsy Banks, Adrienne Baugh, Phoebe Beamon, )  
Alicia Benavides, Setian Bey, Rochelle Blocker, Glori Bond, Kari )  
Boykin, Eddie Bradley, Jennifer Branigan, Louis Brooks, Isheona )  
Brown, Shirley Brown, Stephanie Brown, Dolores Buckley, Leroy )  
Burton, Victor Burton, Joyce Calvin-Harmon, Endella Cole, )  
Jacqueline Coleman, Vivian Covington, Lonzell Cross, )  
Christopher Cruz, Leneka Davis, Lorenzo Davis, Ronald Davis, )  
Shavon Davis, Latasha Downing, Diane Doyle, Erica Duncan, )  
Sharon Elliott, Tommie Galloway, Otis Gardner, Todd Gardner, )  
Christopher Graham, Leshem Graham, Elaine Green, Roosevelt )  
Hall, Robert Hawkins, Lydia Henry, Dorothy Hickman, Roger )  
Hickman, Eric Hirsch Jr., Anthony Hudson, Louvon Zelor )  
Humphries, James Jackson, Veta Jackson, Shirley Jackson- )  
Gordon, Zakia Jarrett, Andre Johnson, Charlene Johnson, Crystal )  
Johnson, Dwayne Johnson, Clarence Jones, Irene Jones, Marjorie )  
Jones, Darlissa Jordan, Joseph Lewis, Jennifer Madden, Wilton )  
Martin, Sade McFadden, Yvette Mells, Michael Merrill, Cara )  
Meyers, Deidre Meyers, Carmelita Moore, Mike Ogbara, Deborah )  
Orr, Porchia Pelt, Lolita Perkins, Lisa Plummerel, Henry Porter, )  
Kelly Rembert, Shirley Rivers, Natasha Roberson, James )  
Roberson, Phyllis Saunders, Peggy Sims, Michelle Smith- )  
Williams, George Snyder, Jimmy Sorrell, Hester Spurlock, )  
Laquesha Stephenson, Sylvia Stevens, LaTanya Stewart, John )  
Turner, Tanika Vercher, Robin Walker, Phyllis Warren, Ernestine )  
Watson, Mary White, Cleo Wilder, Gina Williams, Johnny )  
Williams, Marquita Willis, Gregory Wooding, and Sharon Wynn, )  
individually, and on behalf of all others similarly situated, )

Plaintiffs, )

v. )

AQUA ILLINOIS, INC., an Illinois corporation, )

Defendant. )

Case No. 1:25-cv-2522

**Jury Trial Demanded**

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**CLASS ACTION COMPLAINT**

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Plaintiffs Rozita Arnold, Patsy Banks, Adrienne Baugh, Phoebe Beamon, Alicia Benavides, Setian Bey, Rochelle Blocker, Glori Bond, Kari Boykin, Eddie Bradley, Jennifer Branigan, Louis Brooks, Isheona Brown, Shirley Brown, Stephanie Brown, Dolores Buckley, Leroy Burton, Victor Burton, Joyce Calvin-Harmon, Endella Cole, Jacqueline Coleman, Vivian Covington, Lonzell Cross, Christopher Cruz, Leneka Davis, Lorenzo Davis, Ronald Davis, Shavon Davis, Latasha Downing, Diane Doyle, Erica Duncan, Sharon Elliott, Tommie Galloway, Otis Gardner, Todd Gardner, Christopher Graham, Leshem Graham, Elaine Green, Roosevelt Hall, Robert Hawkins, Lydia Henry, Dorothy Hickman, Roger Hickman, Eric Hirsch Jr., Anthony Hudson, Louvon Zelor Humphries, James Jackson, Veta Jackson, Shirley Jackson-Gordon, Zakia Jarrett, Andre Johnson, Charlene Johnson, Crystal Johnson, Dwayne Johnson, Clarence Jones, Irene Jones, Marjorie Jones, Darlissa Jordan, Joseph Lewis, Jennifer Madden, Wilton Martin, Sade McFadden, Yvette Mells, Michael Merrill, Cara Meyers, Deidre Meyers, Carmelita Moore, Mike Ogbara, Deborah Orr, Porchia Pelt, Lolita Perkins, Lisa Plummerel, Henry Porter, Kelly Rembert, Shirley Rivers, Natasha Roberson, James Roberson, Phyllis Saunders, Peggy Sims, Michelle Smith-Williams, George Snyder, Jimmy Sorrell, Hester Spurlock, Laquesha Stephenson, Sylvia Stevens, LaTanya Stewart, John Turner, Tanika Vercher, Robin Walker, Phyllis Warren, Ernestine Watson, Mary White, Cleo Wilder, Gina Williams, Johnny Williams, Marquita Willis, Gregory Wooding, and Sharon Wynn (collectively, “Plaintiffs”), individually, and on behalf of all others similarly situated, by and through counsel at Zimmerman Law Offices, P.C., bring this complaint against Defendant Aqua Illinois, Inc. (“Defendant” or “Aqua”), as follows:

## **I. INTRODUCTION**

1. This Class Action Complaint arises out of the contamination of the water supply of Plaintiffs and thousands of other residents and entities in the Village of University Park,

Illinois (the “Village”) by Aqua, which owns and operates the public water system in the Village (the “Public Water System”). The water supplied by the Public Water System shall be hereinafter referred to as the “Public Water Supply.”

2. As set forth below, Aqua caused and/or threatened the release of a contaminant—*i.e.*, SeaQuest and/or lead—into the drinking water supply throughout the Village by altering the properties of the Public Water Supply. The release and/or threatened release of SeaQuest and/or lead into Plaintiffs’ and Class members’ drinking water caused them to incur significant costs and other damages for which they seek redress in this action.

## **II. PARTIES**

### **A. Plaintiffs**

3. At all relevant times, Plaintiffs Rozita Arnold, Patsy Banks, Adrienne Baugh, Phoebe Beamon, Alicia Benavides, Setian Bey, Rochelle Blocker, Glori Bond, Kari Boykin, Eddie Bradley, Jennifer Branigan, Louis Brooks, Isheona Brown, Shirley Brown, Stephanie Brown, Dolores Buckley, Leroy Burton, Victor Burton, Joyce Calvin-Harmon, Endella Cole, Jacqueline Coleman, Vivian Covington, Lonzell Cross, Christopher Cruz, Leneka Davis, Lorenzo Davis, Ronald Davis, Shavon Davis, Latasha Downing, Diane Doyle, Erica Duncan, Sharon Elliott, Tommie Galloway, Otis Gardner, Todd Gardner, Christopher Graham, Leshem Graham, Elaine Green, Roosevelt Hall, Robert Hawkins, Lydia Henry, Dorothy Hickman, Roger Hickman, Eric Hirsch Jr., Anthony Hudson, Louvon Zelor Humphries, James Jackson, Veta Jackson, Shirley Jackson-Gordon, Zakia Jarrett, Andre Johnson, Charlene Johnson, Crystal Johnson, Dwayne Johnson, Clarence Jones, Irene Jones, Marjorie Jones, Darlissa Jordan, Joseph Lewis, Jennifer Madden, Wilton Martin, Sade McFadden, Yvette Mells, Michael Merrill, Cara Meyers, Deidre Meyers, Carmelita Moore, Mike Ogbara, Deborah Orr, Porchia Pelt, Lolita Perkins, Lisa Plummerel, Henry Porter, Kelly Rembert, Shirley Rivers, Natasha Roberson, James

Roberson, Phyllis Saunders, Peggy Sims, Michelle Smith-Williams, George Snyder, Jimmy Sorrell, Hester Spurlock, Laquesha Stephenson, Sylvia Stevens, LaTanya Stewart, John Turner, Tanika Vercher, Robin Walker, Phyllis Warren, Ernestine Watson, Mary White, Cleo Wilder, Gina Williams, Johnny Williams, Marquita Willis, Gregory Wooding, and Sharon Wynn were residents of the Village of University Park, Illinois.

**B. Defendant**

4. Defendant Aqua Illinois, Inc. is an Illinois corporation with its principal place of business located at 1000 S. Schuyler Avenue, Kankakee, Illinois 60901.

**III. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 103, *et seq.*, which is a federal statute.

6. Supplemental jurisdiction to adjudicate issues pertaining to state law is proper in this Court pursuant to 28 U.S.C. § 1367, because the state law claims are related to the CERCLA claim.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), because Defendant resides in this District and a substantial part of the events or omissions giving rise to Plaintiffs’ and Class members’ claims occurred in, was directed to, and/or emanated from this District.

**IV. FACTUAL ALLEGATIONS**

**A. Aqua Switched the University Park Public Water Supply to Kankakee River Water in December 2017**

8. Aqua switched the University Park Public Water Supply from groundwater wells to the Kankakee River water on December 9, 2017.

**B. Aqua Was in a Rush to Get the Kankakee River Water Main Into Service**

**1. Aqua Wanted to Get the Water Main in Service by the End of 2017, So Aqua Could Increase its Water Rates to University Park Customers**

9. Aqua's priority was to get the Kankakee River water main into service and start delivering Kankakee River water to University Park by the end of 2017, so Aqua could get increased water rates from University Park customers approved by the Illinois Commerce Commission ("ICC") as part of its pending rate case before the ICC.

10. Aqua's president, Craig Blanchette ("Blanchette"), told Keith Mulholland ("Mulholland")—who was in charge of getting the water main in service for Aqua—that Mulholland should devote 12-hour shifts and round-the-clock crews to this water main project, and that it was Mulholland's #1 priority to make sure it gets into service by the end of 2017, so Aqua could increase its water charges to University Park customers as part of its pending ICC rate case.

**2. Aqua Put the Water Main in Service Without an Operating Permit, in Violation of the Law**

11. Because Aqua was in a rush to get the Kankakee River water main in service, Aqua put the water transmission main to University Park in service without an operating permit. Blanchette knew the water main would be put in service without an operating permit, and he allowed that to happen.

12. The Illinois EPA ("IEPA") issued a Violation Notice to Aqua for this misconduct.

**3. Aqua Has a Pattern and Practice of Putting Water Mains in Service Without an Operating Permit**

13. It was a regular practice for Aqua to put water pipelines into service without an operating permit.

**C. Aqua Started Adding the SeaQuest Chemical to University Park Water**

**1. Aqua Started Adding SeaQuest to University Park Well Water in July 2017**

14. SeaQuest was first added to the water in University Park wells on July 13, 2017.

15. Aqua selected SeaQuest based on past performance because Aqua used SeaQuest elsewhere in the past.

**2. The Purpose of Using SeaQuest Was to Dissolve Scale From the Inner Surface of Water Pipes, and Prevent New Scale From Forming**

16. The purpose of using SeaQuest was to remove/dissolve the calcium carbonate (CaCO<sub>3</sub>) scale from the inner surface of the water pipes throughout University Park, and also help prevent new CaCO<sub>3</sub> deposits from forming on the pipes.

**3. Aqua Continued Adding SeaQuest in University Park After the Switch to Kankakee River Water**

17. When Aqua switched University Park from well water to Kankakee River water in December 2017, Aqua started feeding SeaQuest into the Kankakee River water in University Park, and Aqua continuously added SeaQuest to the Kankakee River water in University Park thereafter.

**4. Aqua Started Adding SeaQuest to the Kankakee River Water Without a Construction Permit or an Operating Permit, in Violation of the Law**

18. Aqua started adding SeaQuest to the Kankakee River water in University Park in December 2017 without a *construction* permit for the chemical feed equipment to do that. The IEPA issued a Violation Notice to Aqua for this misconduct.

19. Aqua started adding SeaQuest to the Kankakee River water in University Park in December 2017 without an *operating* permit for the chemical feed equipment to do that. The IEPA issued a Violation Notice to Aqua for this misconduct.

20. Blanchette and other Aqua employees knew Aqua was adding SeaQuest to University Park water without a permit, and they allowed that to happen because they were in a rush to get the water main in service.

**5. Aqua Has a Pattern and Practice of Adding Chemicals to Public Water Supplies Without an Operating Permit**

21. It was a regular practice for Aqua to add chemicals to municipal public water supplies without an operating permit.

**D. Aqua Failed to Perform Any Corrosion Control Studies, Coupon Studies, or Increased Water Testing Prior to the Switch to Kankakee River Water**

**1. Aqua Failed to Perform Any Studies or Testing to Determine What the Initial Dosage of SeaQuest Should Be**

22. Aqua determined the initial dosage of SeaQuest to add to the Kankakee River water in University Park based on previous experience using SeaQuest elsewhere in the past.

23. Aqua failed to perform any studies or testing to determine what the initial SeaQuest dosage should be in University Park.

**2. The Vernon Snoeyink Report Was the Only Evaluation Performed Prior to the Switch to Kankakee River Water**

24. Prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any coupon studies or increased water studies relative to Kankakee River water and SeaQuest.

25. After Aqua started adding SeaQuest to the University Park wells in July 2017 up to the time of the switch to Kankakee River water in December 2017, Aqua failed to perform any additional testing of the water at the Kankakee Water Treatment Plant or in University Park.

26. The Vernon Snoeyink (“Snoeyink”) report, dated August 1, 2017 (“Snoeyink Report”), was the only evaluation performed relative to Kankakee River water and SeaQuest as it relates to corrosion control within the water pipes, brass plumbing, and water fixtures in

University Park.

**3. Aqua Ignored All of the Warnings Raised in the Snoeyink Report Concerning SeaQuest and the Switch to Kankakee River Water**

27. Aqua knew that the University Park well water was highly supersaturated with  $\text{CaCO}_3$ , and the well water had a high potential to deposit  $\text{CaCO}_3$  on the pipes. Snoeyink calculated that the inner surfaces of University Park water pipes should be covered with a thick calcium carbonate ( $\text{CaCO}_3$ ) coating, but Aqua personnel said the water system did not show such a scale. However, Aqua failed to perform any corrosion control studies or any other studies to try to explain this discrepancy prior to the water switch.

28. The Snoeyink Report warned that adding SeaQuest to the Kankakee River water in University Park will likely cause the water to be undersaturated with  $\text{CaCO}_3$ , which may lead to dissolution of  $\text{CaCO}_3$ -containing scales from the water pipes, and that SeaQuest dosage control will be especially important relative to controlling this effect. However, when Aqua was considering whether to use SeaQuest and how much SeaQuest to use, Aqua failed to consider whether adding SeaQuest to the Kankakee River water would cause the water to be undersaturated with  $\text{CaCO}_3$ , or whether that may lead to the dissolution of  $\text{CaCO}_3$ -containing scales from the University Park water pipes.

29. The Snoeyink Report warned that it is likely that the SeaQuest will sequester some of the calcium and cause the water to be undersaturated with  $\text{CaCO}_3$ , and the undersaturation can lead to the dissolution of  $\text{CaCO}_3$  deposits on the University Park water pipes. However, Aqua failed to take this potentiality of the dissolution of  $\text{CaCO}_3$  scales from the University Park water pipes into consideration when deciding whether to use SeaQuest and how much SeaQuest to use.

30. Prior to the switch, Aqua knew of the differences in water chemistry between University Park well water and Kankakee River water (*e.g.*, University Park well water is very

hard, Kankakee River water is soft, University Park well water has high alkalinity, Kankakee River water has low alkalinity). Aqua knew this prior to the water switch.

31. The Snoeyink Report warned that the Kankakee River water is much softer, lower in alkalinity, and significantly less supersaturated with  $\text{CaCO}_3$  than the current University Park well water supply, and thus, release of  $\text{CaCO}_3$  deposits from water pipes might occur when the change to Kankakee River water takes place, and SeaQuest may increase the magnitude of such release because one of its actions is to remove  $\text{CaCO}_3$  deposits from water distribution piping. However, when deciding whether to use SeaQuest and how much SeaQuest to use, Aqua failed to consider whether SeaQuest may increase the magnitude of the release of  $\text{CaCO}_3$  deposits from the University Park water piping system after the switch to Kankakee River water.

32. The Snoeyink Report warned that the likely sources of lead in the University Park water piping system are lead/tin solder and brass faucets. The Snoeyink Report warned that lead values in University Park tap water may increase if  $\text{CaCO}_3$  deposits covering lead/tin solder in water pipes and brass fixture surfaces are removed. However, when Aqua was deciding whether to use SeaQuest and how much SeaQuest to use, Aqua failed to consider whether University Park tap water lead values may increase if  $\text{CaCO}_3$  deposits covering lead/tin solder and brass fixture surfaces are removed.

33. The Snoeyink Report warned that lead/tin solder in water pipes and brass fixtures can cause high lead values in the water, so care must be taken to avoid water quality changes that cause removal of  $\text{CaCO}_3$  scales from these materials, and thus allow more lead to be released into the University Park tap water. However, there was no consideration taken by Aqua to avoid water quality changes (after the switch to Kankakee River water) that may cause the removal of  $\text{CaCO}_3$  scales and allow lead to be released into the University Park drinking water.

**E. Aqua Violated Its Water Switch Protocol Requiring Aqua to Verify That SeaQuest Was Being Fed at the Correct Dosage**

**1. Aqua Has No Records Showing How Much SeaQuest It Was Adding to the University Park Public Water Supply**

34. Aqua was filling out Monthly Operating Reports (“MOR”) listing the chemicals, and their dosages, that Aqua was adding to the University Park public water system *prior* to the switch to Kankakee River water.

35. However, Aqua stopped filling out MORs for the University Park public water system *after* the switch to Kankakee River water.

36. Aqua has no document or information showing the actual amount of SeaQuest that Aqua was adding into the University Park Public Water Supply after the switch to Kankakee River water.

**2. Aqua Was Adding SeaQuest at a Rate Higher Than the Recommended Dosage, in Violation of its Water Switch Protocol**

37. Aqua’s water switch protocol required Aqua to verify that SeaQuest was being fed into the University Park water system at the correct dosage. However, there is no information or documents showing Aqua was actually verifying that SeaQuest was being fed into the University Park water system at the correct dosage.

38. Because Aqua has no records showing the actual amount of SeaQuest that it was adding to the University Park public water system after the switch to Kankakee River water, Aqua calculated the estimated SeaQuest dosing based on (i) the invoices showing how much SeaQuest was purchased, and (ii) the amount of water going from the Central Avenue Booster Station into University Park.

39. Aqua’s calculations estimate that from December 2017 (the switch to Kankakee River water) to June 2019 (the Do Not Consume), Aqua was adding **5 times more** SeaQuest to the University Park public water system than it was supposed to add.

40. In violation of Aqua's water switch protocol, Aqua was adding SeaQuest into the University Park water system at a dosage *higher* than the recommended target rate. After the Do Not Consume was issued, it became common knowledge that Aqua had been dosing SeaQuest *higher* than the recommended rate.

**F. Aqua Failed to Perform Lead Testing One Month After the Water Switch, in Violation of Aqua's Water Switch Protocol**

41. Aqua's water switch protocol required Aqua to perform lead and copper testing in University Park tap water one month after switching to Kankakee River water, at a minimum of five sites.

42. In violation of Aqua's water switch protocol, Aqua failed to perform any lead and copper testing within one month after switching the water source from groundwater wells to Kankakee River water in University Park.

**G. The First Round of Lead Testing in 2018 Showed Elevated Lead, but Aqua Manipulated the Results and Did Not Provide the Mandatory Notification to University Park Customers**

**1. University Park Never Had a Problem With Lead in the Water Prior to the Switch to Kankakee River Water**

43. From 1992 through 2017 (prior to the water switch to Kankakee River water), the University Park water test results indicated no problem with lead in the water in University Park.

**2. The First Time Lead Testing Was Performed After the Water Switch, the Results Showed Elevated Lead in the Water for the First Time in the History of University Park**

44. The August 2018 residential tap water testing was the first time that lead testing was performed on the water in University Park after the source water switch to Kankakee River water in December 2017.

45. The results of the August 2018 water testing showed that the tap water lead results had a 90<sup>th</sup> percentile that exceeded the 15 ppb EPA lead action level. This water testing showed

lead detections in homes above 15 ppb for the *first time in the history* of water sampling in University Park.

**3. Aqua Manipulated the Lead Test Results, and Failed to Provide the Required Notice to University Park Customers**

46. Because the August 2018 water lead results exceeded the EPA lead action level, Chapter 4 of the Lead and Copper Rule required Aqua to provide written notice of the elevated lead to each of the University Park customers. However, in violation of this Lead and Copper Rule requirement, Aqua did not provide the required written notice of the elevated lead to the University Park customers.

47. Instead, Aqua collected one additional water sample to “dilute” the test results and bring the 90<sup>th</sup> percentile to **0.1 ppb below** the 15 ppb EPA lead action level, and Aqua stopped testing after collecting that one sample. According to an EPA employee, Aqua’s conduct in increasing the water sampling to “dilute” the testing pool and bring the overall lead test results below the EPA lead action level was not proper.

**4. The IEPA Issued Two Violation Notices to Aqua Due to Aqua’s Improper August 2018 Lead Sampling**

48. The IEPA issued a Violation Notice to Aqua relative to the August 2018 sampling for Aqua’s failure to properly categorize lead and copper sampling sites according to the regulations for University Park.

49. The IEPA issued a Second Violation Notice to Aqua relative to the August 2018 sampling because Aqua failed to collect all required samples for University Park.

**5. Aqua Could Not Assure the University Park Tap Water Was Safe to Consume in 2018, Yet Aqua Did No Testing or Investigation Into the Elevated Lead**

50. The U.S. EPA required Aqua to admit that it could not ensure the quality of the University Park drinking water from July – December 2018, due to Aqua’s sampling misconduct

in the August 2018 lead testing.

51. After the switch to Kankakee River water in December 2017, Aqua could have tested the water in University Park for lead every month if it wanted to. Aqua did not need permission from the IEPA to conduct increased lead testing in University Park after the switch.

52. However, Aqua performed no additional water or lead testing to investigate the cause of the elevated lead test results in the August 2018 water testing. Aqua failed to perform a corrosion control study for the University Park public water system in response to the results of the August 2018 water testing.

53. Aqua did nothing to investigate the source of the elevated lead levels in University Park tap water following the August 2018 testing, which showed elevated lead for the first time in the history of the village.

**H. The Village of Peotone Coupon Study in January 2019 Showed SeaQuest Should Not Be Used in University Park, but Aqua Ignored the Expert's Warnings**

54. On January 10, 2019, David Cornwell (“Cornwell”) issued his report on the coupon study he performed for Aqua to analyze the switch from well water to Kankakee River water in the Village of Peotone (“Peotone Study”). As part of the Peotone Study, Cornwell made some recommendations with respect to the dosing and use of SeaQuest in University Park, stating the results of the Peotone Study may also be useful for the University Park system which also recently switched to Kankakee Water Treatment Plant treated water.

55. The Peotone Study showed the optimal SeaQuest dose to limit lead solubility was zero (0.00). In other words, using *no* SeaQuest performed the same as *using* SeaQuest to control the release of lead into the water. The Peotone Study also showed higher doses of SeaQuest actually resulted in higher lead levels in the water; thus, using *no* SeaQuest would actually *reduce* the release of lead into the water.

56. Cornwell warned that SeaQuest should not be added alone due to the observed increase of lead in the water in the Peotone Study. However, Aqua continued adding SeaQuest alone in University Park and Aqua did nothing to evaluate the rationale for continuing to use SeaQuest in University Park water, as opposed to discontinuing SeaQuest altogether.

57. Cornwell warned that if SeaQuest is needed to sequester iron or other metals, SeaQuest's effect of releasing lead in the water may be offset if an orthophosphate is added along with the SeaQuest, as the water lead levels decreased when an orthophosphate was added to SeaQuest.

58. However, Aqua did not add an orthophosphate to the SeaQuest in University Park and Aqua did nothing to evaluate the rationale for either adding an orthophosphate to the SeaQuest, or not adding an orthophosphate to the SeaQuest, in University Park water.

**I. The Second Round of Lead Testing in 2019 Showed Elevated Lead, and Aqua Issued a Do Not Consume Notice Because Aqua Could Not Assure the Water Was Safe to Consume**

**1. The Second Time Lead Sampling Was Performed After the Water Switch, the Results Again Showed Elevated Lead in University Park Water**

59. The May 2019 residential tap water testing was the second round of lead testing conducted in University Park after the source water switch to Kankakee River water in December 2017.

60. Similar to the August 2018 sampling, the levels of lead in the May 2019 water testing also exceeded the EPA lead action level because more than 10% of the tap water samples had a lead concentration greater than 15 ppb (*i.e.*, the results exceeded the 90<sup>th</sup> percentile for lead). In fact, Lead and Copper Rule sampling showed the 90<sup>th</sup> percentile for lead was significantly elevated at 167 ppb in University Park water.

**2. Aqua Issued a Do Not Consume Notice Advising All University Park Customers Not to Consume Their Tap Water Because Aqua Could Not Assure the Water Was Safe to Consume**

61. On June 14, 2019, Aqua issued a Do Not Consume notice for all customers in the entire University Park service area. There were a total of 2,124 unique premises in the Do Not Consume from June 14, 2019 to July 29, 2019 (when the Lead Advisory Area was created). Of the 2,124 premises in the Do Not Consume, **1,902** of them were **residences**.

62. Aqua issued the Do Not Consume so that nobody in University Park would consume the tap water. At that time, Aqua did not know what was causing the elevated lead levels or how widespread it was throughout University Park.

63. At the time Aqua issued the Do Not Consume notice, Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume.

64. Because Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume, University Park consumers subject to the Do Not Consume suffered the following damages:

- (a) Expending out-of-pocket costs for bottled water, filters for water pitchers, filtration systems, medical bills, temporary lodging, and other expenses;
- (b) Loss of time;
- (c) Loss of income;
- (d) The presence and potential for elevated levels of lead in the drinking water supply throughout the Village has threatened the health of Plaintiffs and Class members, and exposes them to injury and the fear of future injury, including the risk of increased and irreversible health impacts, especially to young children; and
- (e) The lives of Plaintiffs and Class members have been disrupted on a daily basis, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort.

**3. Aqua Could Not Assure the University Park Tap Water Was Safe to Consume in 2019, Yet Aqua Did No Corrosion Control Study to Investigate the Elevated Lead**

65. The IEPA issued a Violation Notice to Aqua for its failure to provide water that is assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption in University Park. This Violation Notice was issued due to the elevated levels of lead in the University Park tap water that exceeded the EPA lead action level in the May 2019 testing.

66. However, Aqua failed to undertake any type of corrosion control study to investigate the cause of the elevated lead levels in the May 2019 water testing.

**J. Aqua Stopped the SeaQuest on June 15, 2019 Because the SeaQuest Removed the Scale on the Water Pipes, and Aqua Started Adding Orthophosphate to Put the Protective Scale Back on the Pipes**

**1. Aqua Discontinued the Use of SeaQuest on June 15, 2019**

67. Aqua stopped adding SeaQuest to the University Park public water system on June 15, 2019.

**2. The SeaQuest Combined with the Kankakee River Water Removed the CaCO<sub>3</sub> Scale and Caused the Elevated Lead in the Tap Water**

68. The addition of SeaQuest to the Kankakee River water caused the elevated lead in University Park tap water.

69. The treatment product (SeaQuest), along with removing rust, impacted the protective CaCO<sub>3</sub> scale over time that was formerly in place on the inside of the water pipes, at solder connections, and inside fixtures, allowing lead to potentially dissolve into the water. Homes in University Park now have reduced levels of protective scale, allowing lead to dissolve into the water.

70. A chemical reaction between a change in water treatment (SeaQuest) and lead solder within the internal plumbing of homes caused the protective layer of these pipes to be

stripped exposing the lead which dissolved into the water of certain homes in University Park.

71. The analysis of water pipes harvested from University Park homes showed lead had dissolved from the solder and was trapped in the  $\text{CaCO}_3$  scale, and the lead in the scales could be released into the tap water if the scales were disturbed. The pipe analysis showed lead that was originally present as solder had dissolved and some portion of that lead was trapped in the scales. Some water chemistry changes likely disrupted the scale, releasing lead. If this scale is disturbed, it would be easy for loosely associated lead in the scale to be released in particulate form into the tap water.

72. Aqua's investigation identified—supported by state and federal regulators—that the likely cause of elevated lead levels in homes is due to a change in water chemistry (from the switch to Kankakee River water and the addition of SeaQuest) combined with lead solder in the internal plumbing of homes in University Park. This combination caused the protective  $\text{CaCO}_3$  coating in these pipes to be stripped, exposing the lead solder to the water in their internal plumbing systems.

73. The cause of the elevated lead levels in University Park was the change in the water chemistry (from the switch to Kankakee River water and the addition of SeaQuest) that lead to the activation of the lead solder to either remove itself or dissolve from the plumbing scale, and the new chemistry in the water caused that  $\text{CaCO}_3$  scale to loosen in a way that allowed the solder to be exposed and then begin releasing lead into the water.

74. The source of the lead is tied to an adjustment in the treatment (SeaQuest) which appears to have changed the water chemistry so that existing lead in internal plumbing of older properties was released into the water. The results from the sampling throughout University Park after the Do Not Consume showed the lead results typically were associated with tin, which identifies lead solder as the source of the lead. There are no lead service lines, so the source of

the lead clearly was lead solder. The results showing tin with lead confirmed Aqua's suspicion that lead solder was involved.

**3. Aqua Should Not Have Used SeaQuest With the Kankakee River Water in University Park**

75. Aqua should not have used SeaQuest with the Kankakee River water in University Park.

**4. Aqua Started Adding Orthophosphate to University Park Water to Put the Scale Back on the Water Pipes**

76. SeaQuest was discontinued and Aqua switched to an orthophosphate (phosphoric acid) in University Park based on experiments conducted by Cornwell that that it was a better inhibitor to use than SeaQuest. Orthophosphate inhibits corrosion (*i.e.*, decreases water lead levels) by *forming* a scale on the inside of the pipe. To contrast, SeaQuest *dissolves* the scale.

77. Aqua started feeding an orthophosphate in University Park water to put the protective CaCO<sub>3</sub> coating back on the water pipes. Orthophosphate is known to be effective at forming a protective scale with lead and prevents it from dissolving into the water.

78. Aqua intentionally ignored the warnings in the Snoeyink Report and the Peotone Study regarding the improper use of SeaQuest, and the preferred alternative use of orthophosphate, which resulted in the removal of CaCO<sub>3</sub> scale and the release of elevated lead in the drinking water throughout University Park.

**K. Aqua Replaced the Do Not Consume With a Lead Advisory Area Because Aqua Could Not Assure the Tap Water Was Safe to Consume in the Homes in the Lead Advisory Area**

**1. Aqua Replaced the Do Not Consume With a Lead Advisory Area on July 29, 2019**

79. The Do Not Consume was replaced with a Lead Advisory Area on July 29, 2019.

80. The Lead Advisory Area was an area in University Park that was identified after the Do Not Consume was issued where Aqua was able to identify the homes that had or were

suspected to have a potential lead issue, and were the ones that needed to take the extra precautions to protect themselves and their families from ingesting lead.

81. The Lead Advisory Area was meant to be a temporary series of precautions and actions for the community until the corrosion control chemistry (the orthophosphate) remediated the corrosion issue. Aqua put these properties in the Lead Advisory Area because those properties had the potential for exposure to lead, and therefore, Aqua wanted them to have precautions until the corrosion chemistry was in place such that that would not take place.

82. There were a total of 1,634 unique premises in the Lead Advisory Area from July 29, 2019 to July 10, 2024. On July 10, 2024, a Consent Order was entered in *People of the State of Illinois v. Aqua Illinois, Inc., No. 19 CH 1208 (Will County, IL)*, that changed the Lead Advisory Area to a “Customer Resources Area.” Of the 1,634 premises in the Lead Advisory Area, **1,525** of them were **residences**.

83. 183 residential premises in University Park that were constructed *after 1990* were also included in the Lead Advisory Area after the Do Not Consume was lifted.

## **2. Aqua Could Not Assure the Tap Water Was Safe to Consume in the Homes in the Lead Advisory Area**

84. At the time the Lead Advisory Area was created on July 29, 2019, the levels of lead in the University Park water testing exceeded the EPA lead action level because more than 10% of the tap water samples had a lead concentration greater than 15 ppb (*i.e.*, the results exceeded the 90<sup>th</sup> percentile for lead).

85. Aqua implemented the Lead Advisory Area because Aqua could not assure that the finished water coming out of the University Park consumers’ taps in the Lead Advisory Area was safe to consume.

86. Because Aqua could not assure that the finished water coming out of every consumer’s tap within the Lead Advisory Area was safe to consume, University Park consumers

in the Lead Advisory Area suffered the following damages:

- (a) Expending out-of-pocket costs for bottled water, filters for water pitchers, filtration systems, medical bills, temporary lodging, and other expenses;
- (b) Loss of time;
- (c) Loss of income;
- (d) The presence and potential for elevated levels of lead in the drinking water supply throughout the Village has threatened the health of Plaintiffs and Class members, and exposes them to injury and the fear of future injury, including the risk of increased and irreversible health impacts, especially to young children; and
- (e) The lives of Plaintiffs and Class members have been disrupted on a daily basis, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort.

**L. Aqua Violated an EPA Regulation in a Secret Effort to Try to Artificially Lower the Lead Levels in Compliance Tests in 2020**

87. After Aqua implemented the Lead Advisory Area on July 29, 2019, Aqua continued to do lead testing on University Park tap water in homes throughout the Lead Advisory Area.

88. According to the results of the University Park residential tap water sampling, there were 811 lead test results on residential tap water sampling between July 29, 2019 (when the Lead Advisory Area was created) through and including April 28, 2023 that *exceeded* the EPA lead action level of 15 ppb, with the highest result being 57,900 ppb of lead.

89. The EPA does not permit Aqua to tell its compliance testing consumers in University Park to flush the water lines in their homes prior to collecting compliance samples of water for lead testing because flushing the water lines lowers the lead test results. However, in April 2020, Aqua devised a plan to “get around” that prohibition by sending automated telephone calls with recorded messages informing the compliance testing consumers to flush the water lines in their homes prior to collecting the water samples, in an effort to artificially lower

the lead test results.

**M. Aqua Acted Willfully, or With Such Gross Negligence as to Indicate a Wanton Disregard of the Rights of Others, as Aqua Inflicted a Highly Unreasonable Risk of Harm Upon Its Customers in Conscious Disregard of the Risk**

**1. There is No Known Level of Lead in Drinking Water That is Safe to Consume**

90. The Maximum Containment Level Goal (“MCLG”) is the level of a containment in drinking water below which there is no known or expected risk to health. The MCLG for lead is zero (0.00).

91. According to the U.S. EPA:

- (a) *there is no level of lead in drinking water that is safe to consume*, and
- (b) there is no level of lead to consume and have no known or expected risk to health.

**2. The Drinking Water Throughout University Park Was Contaminated With High Levels of Lead**

92. According to the results of the University Park residential tap water sampling, there were 1,359 lead test results on residential tap water between August 23, 2018 (the August 2018 lead testing) through and including April 28, 2023 that *exceeded* the EPA lead action level of 15 ppb, with the highest result being 57,900 ppb of lead.

93. In homes throughout the Do Not Consume and Lead Advisory Area, it was occurring that the tap water lead levels would fluctuate where they were normal at one test, and then days, months, or years later, the lead levels were greater than 15 ppb, and then days, months, or years later, they would be normal. The lead levels fluctuated within each home, and from one home to the next.

94. There were homes constructed *after 1990* that were tested for lead after the Do Not Consume advisory and their water lead test results were *greater* than 15 ppb.

**3. Aqua Could Not Assure the Tap Water Was Safe to Consume for All Residents Throughout University Park**

95. Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume for all consumers subject to the Do Not Consume and/or Lead Advisory Area.

**4. Lead Can Cause Serious Health Problems if it is Ingested From Drinking Lead-Contaminated Water**

96. Consuming lead contaminated water can cause damage to a person's brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of their body.

97. The greatest risk of lead exposure from consuming lead contaminated water is to young infants, young children, and pregnant women.

98. Scientists have linked the effects of lead on the brain with lowered IQ in children, and consuming lead contaminated water can cause lowered IQ in children.

99. Adults with kidney problems and high blood pressure can be affected by consuming low levels of lead more than healthy adults.

100. Lead from consuming lead contaminated water can be stored in a person's bones and it can be released into the blood later in their life.

101. During pregnancy, the child receives lead from the mother's blood which comes from the mother's bones, and may affect the fetus' brain development.

102. Infants and children who drink water containing lead in excess of the lead action level could experience delays in their physical or mental development.

103. Children who consume lead contaminated water could show slight deficits in attention span and learning abilities.

104. Adults who consume lead contaminated water over many years could develop kidney problems or high blood pressure.

**5. The Elevated Lead Throughout University Park Water Caused Extensive Harm to All Residents, Regardless of Whether They Had Elevated Lead in Their Tap Water**

105. Aqua's Do Not Consume notice instructed all University Park customers to not consume their tap water, and instead "use bottled or filtered water for drinking, preparing formula, making ice, brushing teeth and food preparation, until further notice."

106. The University Park residents should not have ignored Aqua's Do Not Consume advisory.

107. 183 residential premises in University Park that were constructed *after 1990* were in the Lead Advisory Area after the Do Not Consume was lifted. Aqua stated these customers continue to be advised to alter their home water use and likely believe it is necessary to use bottled water. Aqua stated these customers believe their water cannot be used normally resulting in great inconvenience (*e.g.*, advised to alter water use, and believe water cannot be used).

108. The University Park residents did not have a better knowledge than Aqua had regarding what was causing the elevated lead in the tap water throughout University Park.

109. The University Park residents did not have a better knowledge than Aqua had regarding which homes throughout University Park had elevated levels of lead in their tap water.

110. When tap water lead levels are fluctuating between normal and elevated lead levels in homes throughout the Lead Advisory Area, and Aqua is advising them to alter their home water use, it is reasonable for all customers in the Lead Advisory Area to think their water may not be safe to drink out of the tap.

111. The University Park residents should not have ignored Aqua's guidance in the Lead Advisory Advisory.

112. Not drinking the tap water in their homes is a disruption that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

113. The Do Not Consume and Lead Advisory Area encompassed more limitations than simply not drinking the tap water.

114. Using bottled or filtered water for drinking, cooking food, washing dishes, and making ice are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

115. Using bottled or filtered water to wash their face, brush their teeth, or bathe themselves are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

116. Using bottled water to water a resident's vegetable garden or wash their vegetables, if they were going to eat those vegetables, is a disruption that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

117. Spending time driving to pick up, or waiting to pick up, bottled water or filters are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

118. Having difficulty carrying bottled water provided by Aqua is a disruption that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

119. Spending time replacing filters in faucets or pitchers is a disruption that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

120. Spending time running tap water through the faucet before using the water is a disruption that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

121. Spending time reviewing news reports, notifications, or community updates regarding the water quality issues are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

122. Spending time attending or watching public meetings regarding the water quality issues are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

123. Spending time calling Aqua, University Park, or others regarding the water quality issues are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

124. Being concerned about, or spending time researching, health effects related to the water quality issues are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

125. Seeking medical care or testing regarding the water quality issues for oneself, loved ones, or pets are disruptions that all residents who were under the Do Not Consume or in

the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

126. Enduring stress, annoyance, discomfort, or inconvenience, or not being able to fully use and enjoy their residence or business, are disruptions that all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced, *regardless* of whether they had their tap water tested for lead.

127. University Park residents' damages result from Aqua's inability to assure the tap water was safe to consume in homes throughout the village, *regardless* of whether a household had an elevated lead test and regardless of the age of the home.

128. University Park residents do *not* need to have common levels of lead in their tap water in order for the not-assuredly-safe water to have a common impact on the residents.

129. The not-assuredly-safe water has a common impact on University Park residents *regardless* of whether a resident incurred any costs or expenses.

130. University Park residents sustained damages even if they did not drink the tap water prior to the Do Not Consume.

**N. Having Knowledge of the Impending Danger of the Release of Lead Into University Park Water, Aqua Failed to Exercise Ordinary Care to Prevent the Danger**

131. As set forth above, Aqua failed to exercise ordinary care to prevent the known risk of lead release into University Park drinking water, as follows:

- (a) Aqua knowingly rushed the Kankakee River water main into service without a permit, in violation of the law, so Aqua could increase its water charges to University Park customers;
- (b) Aqua knowingly started adding SeaQuest to the Kankakee River water in University Park in December 2017 without a construction permit or an operating permit for the chemical feed equipment to do that, in violation of the law, so Aqua could increase its water charges to University Park customers;

- (c) Aqua failed to perform any studies or testing to determine what the initial SeaQuest dosage should be in University Park;
- (d) Prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any coupon studies, increased water studies, or additional water testing relative to Kankakee River water and SeaQuest;
- (e) The August 2017 Snoeyink Report was the only evaluation performed relative to Kankakee River water and SeaQuest as it relates to corrosion control within the water pipes in University Park, and Aqua ignored *all* of the warnings raised in the Snoeyink Report, as follows:
  - i. Aqua failed to perform any corrosion control studies or any other studies to try to explain the discrepancy regarding whether the inner surfaces of University Park water pipes were covered with CaCO<sub>3</sub> scale;
  - ii. Aqua did nothing to determine whether adding SeaQuest to the Kankakee River water would cause the water to be undersaturated with CaCO<sub>3</sub>, or whether that would lead to the dissolution of CaCO<sub>3</sub>-containing scales from the University Park water pipes;
  - iii. Aqua did nothing to determine whether the SeaQuest would sequester some of the calcium and cause the water to be undersaturated with CaCO<sub>3</sub>, which can lead to the dissolution of CaCO<sub>3</sub> deposits on the University Park water pipes;
  - iv. Aqua did nothing to determine whether the different chemistry of the Kankakee River water would release CaCO<sub>3</sub> deposits from University Park water pipes, and whether SeaQuest would increase the magnitude of the release of CaCO<sub>3</sub> deposits from the pipes;
  - v. Aqua did nothing to determine whether University Park tap water lead values would increase if CaCO<sub>3</sub> deposits covering lead/tin solder and brass fixture surfaces are removed; and
  - vi. Aqua did nothing to avoid water quality changes (after the switch to Kankakee River water) that would cause the removal of CaCO<sub>3</sub> scales and allow lead to be released into the University Park drinking water;
- (f) The Snoeyink Report warned that SeaQuest dosage control will be especially important to control whether SeaQuest dissolves CaCO<sub>3</sub> scales from the University Park water pipes, and Aqua's water switch protocol required Aqua to verify that SeaQuest was being fed into the University Park water system at the correct dosage. Aqua ignored the Snoeyink warning, and violated its water switch protocol, as follows:

- i. Aqua failed to document—and does not know—the actual amount of SeaQuest that Aqua was adding into the University Park Public Water Supply after the switch to Kankakee River water;
  - ii. There is no information or documents showing Aqua was actually verifying that SeaQuest was being fed into the University Park water system at the correct dosage; and
  - iii. Aqua's calculations of its estimated SeaQuest dosing show, from the date of the water switch to the Do Not Consume, Aqua was adding **5 times more** SeaQuest to the University Park public water system than it was supposed to add;
- (g) Aqua's improper use of SeaQuest with Kankakee River water in University Park removed the CaCO<sub>3</sub> scale on the inside of the water pipes and caused lead to be released into the drinking water throughout the village;
- (h) Aqua violated its water switch protocol by failing to perform any lead and copper testing within one month after switching the water source from groundwater wells to Kankakee River water in University Park;
- (i) The August 2018 residential tap water sampling was the first time that lead testing was performed after the switch to Kankakee River water, and it showed elevated lead levels for the **first time in the history** of University Park. Thereafter:
  - i. Aqua knowingly violated the Lead and Copper Rule by failing to provide the required written notice of the elevated lead to each of the University Park customers;
  - ii. Aqua improperly collected one additional water sample to "dilute" the testing pool and bring the overall lead test results to **0.1 ppb below** the EPA lead action level, and Aqua stopped testing after collecting that one sample;
  - iii. The IEPA issued two Violation Notices to Aqua, and the U.S. EPA required Aqua to admit that it could not ensure the quality of the University Park drinking water from July – December 2018, due to Aqua's sampling misconduct; and
  - iv. Aqua did nothing to investigate the cause of the elevated lead levels in University Park tap water following the August 2018 testing;
- (j) The January 2019 Peotone Study warned that SeaQuest should not be added alone due to the observed increase of lead in the water, and if SeaQuest is needed, an orthophosphate should be added to reduce the lead release in the water. Aqua ignored the expert's warnings, as follows:

- i. Aqua continued adding SeaQuest alone in University Park and Aqua did nothing to evaluate the rationale for continuing to use SeaQuest in University Park water, as opposed to discontinuing SeaQuest altogether; and
  - ii. Aqua did not add an orthophosphate to the SeaQuest in University Park and Aqua did nothing to evaluate the rationale for either adding an orthophosphate, or not adding an orthophosphate, in University Park water;
- (k) The May 2019 residential tap water sampling was the second time that lead testing was performed after the switch to Kankakee River water, and it also showed elevated lead levels in University Park tap water. Thereafter:
  - i. On June 14, 2019, Aqua issued a Do Not Consume notice for all customers in the entire University Park service area—including 1,902 residences—because Aqua did not know what was causing the elevated lead levels or how widespread it was throughout University Park;
  - ii. At the time Aqua issued the Do Not Consume notice, Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume;
  - iii. The IEPA issued a Violation Notice to Aqua for its failure to assure that the water it provided to University Park was safe to consume; and
  - iv. Aqua failed to undertake any type of corrosion control study to investigate the cause of the elevated lead levels in the May 2019 water testing;
- (l) It was not until June 15, 2019—*after* the Do Not Consume—that Aqua discontinued SeaQuest and started adding an orthophosphate to the University Park water. This eventual change in chemicals was based on Cornwell's warning in the January 2019 Peotone Study that Aqua had ignored;
- (m) On July 29, 2019, Aqua replaced the Do Not Consume with a Lead Advisory Area because Aqua could not assure that the finished water coming out of the University Park consumers' taps in the Lead Advisory Area—including 1,525 residences—was safe to consume; and
- (n) Aqua intentionally violated an EPA regulation by secretly informing University Park compliance testing consumers to flush the water lines in their homes prior to collecting the water samples, in an effort to artificially lower the lead test results in 2020.

**O. Aqua Has a Pattern and Practice of Engaging in Misconduct and Violating the Law**

132. It was a regular practice for Aqua to put water pipelines into service without an operating permit.

133. It was a regular practice for Aqua to add chemicals to municipal public water supplies without an operating permit.

134. The IEPA issued Violation Notices to Aqua for Aqua's failure to obtain operating permits for construction projects in 2005, 2006 (3 violations), 2008, 2009 (6 violations), 2010 (2 violations), and 2012.

135. The IEPA issued Violation Notices to Aqua dating back to 1998 for Aqua's failure to appropriately monitor water quality in University Park, including requiring Aqua to provide public notice to University Park customers of its water quality monitoring violations.

136. Aqua pumped polluted (not potable) water from the Kankakee Water Treatment Plant into the Kankakee River every day from 2018 (prior to the Do Not Consume) to 2020 without a permit. This was an ongoing illegal discharge of polluted water into the Kankakee River.

137. In January 2024, the IEPA issued a violation notice to Aqua for providing public drinking water that Aqua could not assure was safe to consume due to Aqua's failure to properly treat the water.

**P. Punitive Damages Should Be Awarded Against Aqua**

138. "Punitive or exemplary damages may be awarded when torts are committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others." *Barton v. Chicago & N. W. Transp. Co.*, 325 Ill. App. 3d 1005, 1030 (1st Dist. 2001).

139. “[C]onduct characterized as willful and wanton may be proven where the acts have been less than intentional—*i.e.*, where there has been a failure after knowledge of impending danger, to exercise ordinary care to prevent the danger.” *Ravizza v. PACCAR, Inc.*, 2020 IL App (1st) 181109-U, ¶ 118 (*quoting Ziarko v. Soo Line R.R. Co.*, 161 Ill. 2d 267, 274 (1994)).

140. As set forth above, there is a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages:

- (a) Aqua acted willfully, or with such gross negligence as to indicate a wanton disregard of the rights of University Park consumers;
- (b) Aqua inflicted a highly unreasonable risk of harm upon University Park consumers in conscious disregard of the risk;
- (c) Having knowledge of the impending danger of the release of lead into University Park water, Aqua failed to exercise ordinary care to prevent the danger; and
- (d) Aqua has a pattern and practice of engaging in misconduct and violating the law.

141. Punitive damages should be awarded to punish Aqua for its misconduct, and to deter other owners and operators of public water systems from engaging in similar misconduct.

## **V. APPLICABLE STATUTORY AND REGULATORY FRAMEWORK**

### **A. The Illinois Environmental Protection Act**

142. The Illinois Environmental Protection Act (“Act”) provides, in relevant part, that “No person shall: (a) Cause or threaten or allow the discharge of any contaminants into the environment in any state so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources...” 415 ILCS 5/12(a).

143. Aqua is an Illinois corporation and, thus, is a “person” as defined by the Act. 415 ILCS 5/3.315.

144. As used in the Act, the term “contaminant” means “any solid, liquid, or gaseous

matter, any odor, or any form of energy, from whatever source.” 415 ILCS 5/3.165.

145. The Act defines “water pollution” as “such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into any waters of the state, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.545.

146. As used in the Act, the term “waters” means “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state.” 415 ILCS 5/3.550.

147. The U.S. Environment Protection Agency defines “environment” as “(1) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (2) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.” 42 C.F.R. § 302.3. *See also* 42 U.S.C. § 9601(8) (definition of “environment” in CERCLA statute).

148. “Drinking water supply” means “any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.” 42 U.S.C. § 9601(7).

**1. Aqua Caused or Threatened or Allowed the Discharge of SeaQuest Into the Drinking Water Supply Throughout the Village Caused or Tended to Cause Water Pollution in The Village**

149. Aqua caused or allowed the discharge of a chemical (*i.e.*, SeaQuest) into the drinking water supply throughout the Village. SeaQuest is a “contaminant” as defined by the

Act, because it is a solid or liquid matter. See 415 ILCS 5/3.165.

150. Thus, Aqua caused or allowed the discharge of a contaminant (*i.e.*, SeaQuest) into the environment.

151. The contaminant (*i.e.*, SeaQuest) that Aqua caused or allowed to be discharged into the environment caused or tended to cause alteration of the physical, thermal, chemical, biological or radioactive properties of the drinking water supply throughout the Village because the contaminant (*i.e.*, SeaQuest) caused or tended to cause the drinking water supply to be undersaturated with calcium carbonate (CaCO<sub>3</sub>) and this water chemistry change caused or tended to cause the drinking water supply to remove the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village.

152. The contaminant (*i.e.*, SeaQuest) that Aqua caused or allowed to be discharged into the environment caused or tended to cause the removal of the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village because that is what the contaminant (*i.e.*, SeaQuest) is formulated and intended to do.

153. As set forth above, there is no level of lead in drinking water that is safe to consume, and there is no level of lead to consume and have no known or expected risk to health.

154. The alteration of the physical, thermal, chemical, biological or radioactive properties of the drinking water supply throughout the Village (*i.e.*, the undersaturation of the water with CaCO<sub>3</sub>) that was caused or tended to be caused by the contaminant (*i.e.*, SeaQuest) that Aqua caused or allowed to be discharged into the environment did create or was likely to create a nuisance or render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare because the altered drinking water supply (*i.e.*, the undersaturation of the water with CaCO<sub>3</sub>) removed or tended to cause the removal of the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village which exposed or

tended to expose lead/tin solder and allowed or tended to allow elevated levels of lead to be deposited into the drinking water supply.

155. The contaminant (*i.e.*, SeaQuest) that Aqua caused or allowed to be discharged into the environment did create or was likely to create a nuisance or render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare because the contaminant (*i.e.*, SeaQuest) removed or tended to cause the removal of the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village which exposed or tended to expose lead/tin solder and allowed or tended to allow elevated levels of lead to be deposited into the drinking water supply.

156. Thus, Aqua caused or allowed the discharge of a contaminant (*i.e.*, SeaQuest) into the environment so as to cause or tend to cause water pollution in the Village, in violation of 415 ILCS 5/12(a).

**2. Aqua Caused or Threatened or Allowed the Discharge of Lead Into the Drinking Water Supply Throughout the Village Caused or Tended to Cause Water Pollution in The Village**

157. Aqua also caused or threatened or allowed the discharge of lead into the drinking water supply throughout the Village. Lead is a “contaminant” as defined by the Act, because it is a solid or liquid matter. *See* 415 ILCS 5/3.165.

158. Thus, Aqua caused or threatened or allowed the discharge of a contaminant (*i.e.*, lead) into the environment.

159. The contaminant (*i.e.*, lead) that Aqua caused or threatened or allowed to be discharged into the environment caused or tended to cause alteration of the physical, thermal, chemical, biological or radioactive properties of the drinking water supply throughout the Village because the contaminant (*i.e.*, lead) caused or threatened or allowed the drinking water supply to be contaminated with elevated levels of lead.

160. As set forth above, there is no level of lead in drinking water that is safe to consume, and there is no level of lead to consume and have no known or expected risk to health.

161. The contaminant (*i.e.*, lead) that Aqua caused or threatened or allowed to be discharged into the environment did create or was likely to create a nuisance or render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare because the contaminant (*i.e.*, lead) caused or tended to cause the drinking water supply to be contaminated with elevated levels of lead.

162. Thus, Aqua caused or threatened or allowed the discharge of a contaminant (*i.e.*, lead) into the environment so as to cause or tend to cause water pollution in the Village, in violation of 415 ILCS 5/12(a).

**3. Aqua Knowingly Caused, Threatened, or Allowed the Distribution of Water From the Public Water Supply to Have a Quality That Was Injurious To Human Health**

163. The Act further provides that “no person shall knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health.” 415 ILCS 5/18(a)(1).

164. Aqua knowingly caused or threatened or allowed the distribution of water from the Village’s Public Water Supply with a quality (*i.e.*, the presence of SeaQuest that caused lead to leach into Plaintiffs’ and Class members’ tap water) that was injurious to human health, in violation of 415 ILCS 5/18(a)(1).

**4. Aqua Failed to Provide Water That Was Assuredly Safe**

165. Violations of the Public Water Supply Regulations (“PWS Regulations”) adopted by the Illinois Pollution Control Board (“Board”) pursuant to its authority under the Act also constitute violations of the Act. 415 ILCS 5/12(a) (“No person shall...cause or threaten or allow the discharge of any contaminants into the environment in any state...so as to violate regulations

or standards adopted by the Pollution Control Board under [the] Act.”); 415 ILCS 5/18(a)(2) (“No person shall...violate regulations or standards adopted by the...Board under this Act.”).

166. Prior to July 26, 2019, Section 601.101 of the Board’s PWS Regulations provided, as follows:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act [415 ILCS 5] (Act), the Pollution Control Board (Board) Rules, and the Safe Drinking Water Act (42 U.S.C. 300f, *et seq.*), continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

Section 601.101 of the Board’s PWS Regulations now states, as follows:

Owners and official custodians of a public water supply in the State of Illinois must provide, under the Act, Board Rules, and the Safe Drinking Water Act (42 U.S.C. 300f, *et seq.*), continuous operation and maintenance of public water supply facilities to assure that the water is safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

35 Ill.Adm.Code 601.101, effective July 26, 2019.

167. As set forth above, Aqua’s actions resulted in the water provided to Plaintiffs and Class members to not be “assuredly safe” in quality for ordinary domestic consumption, in violation of 35 Ill.Adm.Code 601.101, which in turn violates 415 ILCS 5/12(a) and 415 ILCS 5/18(a)(2).

## **B. CERCLA**

168. Under CERCLA, a responsible party is liable for any necessary costs incurred by a person in response to a release or threatened release of a hazardous substance. 42 U.S.C. § 9607(a)(1)(B). Thus, “CERCLA liability attaches when a plaintiff establishes that: (1) the site in question is a ‘facility’ as defined by CERCLA; (2) the defendant is a responsible party; (3) there has been a release or there is a threatened release of hazardous substances; and (4) the plaintiff has incurred costs in response to the release or threatened release.” *E.g., Sycamore Indus. Park*

*Associates v. Ericsson, Inc.*, 546 F.3d 847, 850 (7th Cir. 2008).

169. The Public Water System is a “facility,” as that term is defined by CERCLA. 42 U.S.C. § 9601(9) (defining the term “facility” as referring to, *inter alia*, “any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works)”).

170. As the owner and operator of the Public Water System (*i.e.*, a “facility”), Aqua is a responsible party, as contemplated by CERCLA. *E.g.*, 42 U.S.C. § 9607(a)(1) (providing for liability against “the owner and operator of...a facility”); *Metro. Water Reclamation Dist. of Greater Chicago v. N. Am. Galvanizing & Coatings, Inc.*, 473 F.3d 824, 827 (7th Cir. 2007) (noting that “the owner and operator of...a facility” is one of the “four statutory categories” of “responsible parties” established by 42 U.S.C. § 9607(a)).

171. As used in CERCLA, the term “hazardous substance” includes, *inter alia*, “any element, compound, mixture, solution, or substance designated” by the United States Environmental Protection Agency (“US EPA”), pursuant to 42 U.S.C. § 9602. 42 U.S.C. § 9601(14).

172. The US EPA has designated lead as a “hazardous substance,” pursuant to 42 U.S.C. § 9602. 40 C.F.R. § 302.4. Therefore, lead is a “hazardous substance,” as that term is defined by CERCLA. 42 U.S.C. § 9601(14); 40 C.F.R. § 302.4.

173. As used in CERCLA, the term “release” means “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.” 42 U.S.C. § 9601(22).

174. As used in CERCLA, the term “environment” refers to, *inter alia*, any “surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States.” 42 U.S.C. § 9601(8).

175. As used in CERCLA, the term “drinking water supply” refers to, *inter alia*, “any raw or finished water source that is or may be used...as drinking water by one or more individuals.” 42 U.S.C. § 9601(7).

176. Based on the foregoing, the leaching of lead (or threatened leaching of lead) into the tap water in Plaintiffs’ and Class members’ homes constituted a “release” or threatened “release” of a “hazardous substance,” as those terms are defined by CERCLA. *E.g.*, 42 U.S.C. § 9601(7); 42 U.S.C. § 9601(8); 42 U.S.C. § 9601(14); 42 U.S.C. § 9601(22); 40 C.F.R. § 302.4.

177. As used in CERCLA, the term “response” includes, *inter alia*, the “removal” of “hazardous substances” from the “environment,” and actions taken to “remove” “hazardous substances” from the “environment.” 42 U.S.C. § 9601(25).

178. As used in CERCLA, the terms “remove” and/or “removal” refer to “the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release,” and include the “provision of alternative water supplies.” 42 U.S.C. § 9601(23).

179. Based on the foregoing, costs incurred by Plaintiffs and Class members in connection with the “removal” of lead (*i.e.*, a “released” “hazardous substance”) from the tap water in their homes (*i.e.*, “the environment”) are “costs of response,” as contemplated by 42 U.S.C. § 9607(a)(1)(B). *E.g.*, 42 U.S.C. § 9601(7); 42 U.S.C. § 9601(8); 42 U.S.C. § 9601(14); 42 U.S.C. § 9601(22); 42 U.S.C. § 9601(23); 42 U.S.C. § 9601(25); 40 C.F.R. § 302.4.

## VI. CLASS ALLEGATIONS

### A. Rule 23 Allegations

180. **Class Definition:** Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2), (b)(3), and (c)(4), on behalf of a class of similarly situated individuals (“the Class”), defined as follows:

All persons and entities in the Village of University Park, Illinois who obtained water from the drinking water supply and were under a “do not consume” notice or “lead advisory” at any time during the Class Period.

Excluded from the Class are: (1) Aqua, Aqua’s agents; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person and entity who executes and files a timely request for exclusion from the Class; (4) any persons and entities who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person and entity.

181. **Class Period:** The Class Period begins in 2017, when Aqua caused or allowed SeaQuest to be discharged into the drinking water supply throughout the Village.

182. **Numerosity:** The Class consists of thousands of individuals and entities, and is so numerous that joinder of all members of the Class is impracticable, given that (1) the “do not consume” notice affected everyone in the Village, including more than 1,900 residential connections, (2) the U.S. Census Bureau recorded a population of 7,129 in the Village in the 2010 census, and (3) the U.S. Census Bureau estimates a population of 7,020 in the Village as of July 1, 2022.<sup>1</sup> In addition, the Lead Advisory Area consists of over 1,500 residential connections in the Village. Class members can be easily identified through Aqua’s records or by other means.

183. **Commonality and Predominance:** Plaintiffs assert that, as the owner and operator of the Village’s public water system, Aqua had a legal duty to provide water to

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<sup>1</sup> See <https://www.census.gov/quickfacts/fact/table/universityparkvillageillinois/PST045222>

Plaintiffs and Class members that was not excessively corrosive or otherwise deleterious so that their tap water was assuredly safe for human consumption. Plaintiffs further assert that, in derogation of this legal duty, Aqua's actions and inactions regarding Aqua's source water switch for the public water system in the Village from groundwater wells to the Kankakee River, and the introduction of SeaQuest into the public water system, ultimately led to (1) a Village-wide water crisis, (2) the Do Not Consume advisory which, by definition, informed all consumers in the Village that Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume, and that, as a result, they should no longer consume it, and (3) the slightly more limited, but still substantially inclusive, Lead Advisory Area, which informed more than 1,500 consumers in the Village that Aqua could not assure that the finished water coming out of the University Park consumer's taps in the Lead Advisory Area was safe to consume, and they had to filter it, or else they should continue to use bottled water. Common questions of fact and law include:

- (1) whether Aqua knowingly rushed the Kankakee River water main into service without an operating permit, so it could start delivering Kankakee River water to University Park by the end of 2017, in order to increase its water charges to University Park customers as part of its pending rate case;
- (2) whether Aqua knowingly started adding SeaQuest to the Kankakee River water in University Park in December 2017 without a construction permit or an operating permit for the chemical feed equipment to do that, so Aqua could increase its water charges to University Park customers as part of its pending rate case;
- (3) whether, prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any coupon studies, increased water studies, or additional water testing relative to Kankakee River water and SeaQuest;
- (4) whether, prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any studies or testing to determine what the initial SeaQuest dosage should be in University Park;
- (5) whether, prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any corrosion control studies or any other studies

to try to explain the discrepancy regarding whether the inner surfaces of University Park water pipes were covered with a calcium carbonate (CaCO<sub>3</sub>) scale;

- (6) whether, prior to the switch to Kankakee River water in December 2017, Aqua did anything to determine whether the SeaQuest would sequester some of the calcium, cause the water to be undersaturated with CaCO<sub>3</sub>, and lead to the dissolution of CaCO<sub>3</sub> deposits on the University Park water pipes;
- (7) whether the Snoeyink Report warned that adding SeaQuest to the Kankakee River water would cause the water to be undersaturated with CaCO<sub>3</sub> and lead to the dissolution of CaCO<sub>3</sub>-containing scales from the University Park water pipes, and whether Aqua ignored this warning;
- (8) whether, prior to the switch to Kankakee River water in December 2017, Aqua did anything to determine if the different chemistry of the Kankakee River water would release CaCO<sub>3</sub> deposits from University Park water pipes, and if SeaQuest would increase the magnitude of the release of CaCO<sub>3</sub> deposits from the pipes after the water switch;
- (9) whether the Snoeyink Report warned that the different chemistry of the Kankakee River water could release CaCO<sub>3</sub> deposits from University Park water pipes, and SeaQuest may increase the magnitude of the release of CaCO<sub>3</sub> deposits from the pipes after the water switch, and whether Aqua ignored this warning;
- (10) whether, prior to the switch to Kankakee River water in December 2017, Aqua did anything to determine if University Park tap water lead values would increase if CaCO<sub>3</sub> deposits covering lead/tin solder and brass fixture surfaces are removed from the water pipes;
- (11) whether the Snoeyink Report warned that University Park tap water lead values could increase if CaCO<sub>3</sub> deposits covering lead/tin solder and brass fixture surfaces are removed from the water pipes, and whether Aqua ignored this warning;
- (12) whether Aqua Aqua did anything to avoid water quality changes (after the switch to Kankakee River water) that would cause the removal of CaCO<sub>3</sub> scales and allow lead to be released into the University Park drinking water;
- (13) whether the Snoeyink Report warned that Aqua should avoid water quality changes (after the switch to Kankakee River water) that would cause the removal of CaCO<sub>3</sub> scales and allow lead to be released into the University Park drinking water, and whether Aqua ignored this warning;

- (14) whether Aqua failed to document—and does not know—the actual amount of SeaQuest that Aqua was adding into the University Park public water supply after the switch to Kankakee River water;
- (15) whether Aqua's calculations of its estimated SeaQuest dosing show, from the date of the water switch to the Do Not Consume, Aqua was adding more SeaQuest to the University Park public water system than it was supposed to add;
- (16) whether the Snoeyink Report warned that SeaQuest dosage control will be especially important to control whether SeaQuest dissolves CaCO<sub>3</sub> scales from the University Park water pipes, and whether Aqua ignored this warning;
- (17) whether Aqua's water switch protocol required Aqua to verify that SeaQuest was being fed into the University Park water system at the correct dosage, and whether Aqua violated this protocol;
- (18) whether Aqua's use of SeaQuest with Kankakee River water in University Park removed the CaCO<sub>3</sub> scale on the inside of the water pipes and caused lead to be released into the drinking water throughout the Village;
- (19) whether Aqua performed any lead and copper testing in University Park tap water within one month after switching the water source to Kankakee River water;
- (20) whether Aqua's water switch protocol required Aqua to perform lead and copper testing in University Park tap water within one month after switching the water source to Kankakee River water, and whether Aqua violated this protocol;
- (21) whether Aqua did anything to investigate the source of the elevated lead in the August 2018 residential tap water testing in University Park;
- (22) whether Chapter 4 of the Lead and Copper Rule required Aqua to provide written notice of the elevated lead in the August 2018 water testing to each of the University Park customers, and whether Aqua violated this Rule by failing to provide this written notice;
- (23) whether it was proper for Aqua to collect one additional water sample to bring the overall lead test results below the EPA lead action level for the August 2018 water testing;
- (24) whether, at the time of the August 2018 water testing, Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume;

- (25) whether, from January 2019 to the Do Not Consume, Aqua continued adding SeaQuest alone in University Park and did nothing to evaluate the rationale for continuing to use SeaQuest in University Park water, as opposed to discontinuing SeaQuest altogether;
- (26) whether, from January 2019 to the Do Not Consume, Aqua did not add an orthophosphate to the SeaQuest in University Park and did nothing to evaluate the rationale for either adding an orthophosphate, or not adding an orthophosphate, in University Park water;
- (27) whether the January 2019 Peotone Study warned that SeaQuest should not be added alone due to the observed increase of lead in the water, and if SeaQuest is needed, an orthophosphate should be added to reduce the lead release in the water, and whether Aqua ignored those warnings;
- (28) whether, at the time Aqua issued the Do Not Consume, Aqua did not know what was causing the elevated lead levels or how widespread it was throughout University Park;
- (29) whether, at the time Aqua issued the Do Not Consume, Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume;
- (30) whether Aqua undertook any type of corrosion control study to investigate the cause of the elevated lead levels in the May 2019 water testing;
- (31) whether, at the time Aqua created the Lead Advisory Area, Aqua could not assure that the finished water coming out of the University Park consumers' taps in the Lead Advisory Area was safe to consume;
- (32) whether, in homes throughout the Do Not Consume and Lead Advisory Area, it was occurring that the tap water lead levels would fluctuate between normal and elevated levels within each home, and from one home to the next;
- (33) whether it was reasonable for customers in University Park who were subject to the Do Not Consume and Lead Advisory Area to think that their water may not be safe to drink out of the tap;
- (34) whether there is any level of lead in drinking water that is safe to consume;
- (35) whether Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume for all consumers subject to the Do Not Consume and/or Lead Advisory Area;

- (36) whether it was appropriate for University Park residents to follow Aqua's guidance in the Do Not Consume and Lead Advisory Area, and abstain from using/consuming their tap water;
- (37) whether the Do Not Consume and Lead Advisory Area encompassed more limitations than simply not drinking the tap water;
- (38) whether all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced disruptions in their lives, regardless of whether they had their tap water tested for lead;
- (39) whether University Park residents' damages result from Aqua's inability to assure the tap water was safe to consume in homes throughout the Village (including homes in the Lead Advisory Area constructed after 1990), regardless of whether a household had an elevated lead test, and even if they did not drink the tap water prior to the Do Not Consume;
- (40) whether Aqua had a duty to assure that the finished water coming out of every University Park consumer's tap was safe to consume;
- (41) whether Aqua breached its duty to assure that the finished water coming out of every University Park consumer's tap was safe to consume for the households subject to the Do Not Consume and/or Lead Advisory Area;
- (42) whether Aqua caused water that was not assuredly safe to enter Plaintiffs' and Class members' land through a negligent act;
- (43) whether Aqua caused water that was not assuredly safe to invade Plaintiffs' and Class members' interest in the use and enjoyment of their land; and
- (44) whether, and to what extent, Plaintiffs and Class members incurred "costs of response" in connection with Aqua's contamination of the Village's water supply, as contemplated by CERCLA.

The truth of each of these assertions is a substantive issue that will control the outcome of each of Plaintiffs' causes of action, and this case at large. A ruling in favor of Plaintiffs on these issues will demonstrate that Aqua is factually and legally responsible for the Village-wide water crisis, and will establish a right of recovery in other Class members.

184. Additionally, Plaintiffs seek punitive damages in this case. Although some of the common questions of fact and law listed above will also be applicable to the issue of punitive damages, there are additional common questions of fact and law relative to punitive damages,

such as:

- (1) whether it was a regular practice for Aqua to put water pipelines into service without an operating permit;
- (2) whether it was a regular practice for Aqua to add chemicals to municipal public water supplies without an operating permit;
- (3) whether it was a regular practice for Aqua to put construction projects into service without an operating permit, and whether the IEPA issued violation notices to Aqua for that conduct;
- (4) whether Aqua intentionally violated an EPA regulation by secretly informing University Park compliance testing consumers to flush the water lines in their homes prior to collecting the water samples, in an effort to artificially lower the lead test results in 2020;
- (5) whether Aqua pumped polluted (not potable) water from the Kankakee Water Treatment Plant into the Kankakee River every day from 2018 (prior to the Do Not Consume) to 2020 without a permit, and whether that constitutes an ongoing illegal discharge of polluted water into the Kankakee River;
- (6) whether, in January 2024, the IEPA issued a violation notice to Aqua for providing public drinking water that Aqua could not assure was safe to consume due to Aqua's failure to properly treat the water;
- (7) whether Aqua acted willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others;
- (8) whether Aqua inflicted a highly unreasonable risk of harm upon its customers in conscious disregard of the risk;
- (9) whether Aqua had knowledge of the impending danger of the release of lead into University Park water, and whether Aqua failed to exercise ordinary care to prevent the danger; and
- (10) whether Aqua has a pattern and practice of engaging in misconduct and violating the law.

185. Plaintiffs will prove the aggregate amount of Plaintiffs' and Class members' damages on a classwide basis through the use of common evidence, representative sampling, and statistical modeling.

186. Moreover, the imposition of punitive damages turns on Defendant's conduct—which, here, was uniform with respect to Plaintiffs and Class members—and punitive damages are not designed to compensate for any particular loss. Thus, Plaintiffs' and Class members' individualized circumstances will make no difference to the resolution of whether, and to what extent, punitive damages should be imposed. *See, e.g., Franz v. Calaco Dev. Corp.*, 352 Ill.App.3d 1129, 1140 (2nd Dist. 2004) (“The focus of punitive damages is not on the position of the party wronged, but the position of the party committing the wrong.”); *Barton v. Chicago & N. W. Transp. Co.*, 325 Ill.App.3d 1005, 1030 (1st Dist. 2001) (explaining the justifications for punitive damages). Therefore, this issue can be determined on a classwide basis.

187. Finally, Plaintiffs' claim for trespass entitles Plaintiffs and Class members to recover nominal damages to compensate them for the fact that a trespass occurred. *E.g., Chicago Title Land Tr. Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 77. The trespass claimed here is the alleged invasion of water that was not assuredly safe onto Plaintiffs' and Class members' properties. Since Plaintiffs allege the water entering onto any property subject to the Do Not Consume advisory and/or Lead Advisory Area was not assuredly safe to consume, the nature of the invasion at issue—and by extension, the amount of nominal damages that invasion warrants—would be identical across the Class.

188. **Typicality:** The claims of the Plaintiffs are typical of the claims of the Class because all claims are based on the same legal and factual issues, and Plaintiffs and Class members were each subjected to Aqua's alleged uniform course of conduct. Specifically, Plaintiffs allege that Aqua distributed finished water to Plaintiffs and Class members that was not assuredly safe to consume, as a result of Aqua's alleged actions and inactions. Plaintiffs also allege that they and Class members all suffered damages from Aqua issuing a Do Not Consume advisory and creating a Lead Advisory Area, and that it was reasonable for all individuals within

the areas subject to the Do Not Consume advisory and/or the Lead Advisory Area to believe that their water was unsafe, abstain from using/consuming it, and take steps to remediate the situation in response to the release or threatened release of lead into their tap water.

189. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class, and they are committed to vigorously prosecuting this litigation. Plaintiffs have no interest antagonistic to those of the Class, and Aqua has no defenses unique to any Plaintiff. Plaintiffs' counsel can fairly and adequately represent and protect the interests of the Class members, as they have extensive experience handling complex litigation and class action lawsuits, they are competent and qualified, and they are committed to vigorously prosecuting this litigation.

190. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy considering the interests of the Class members in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced by Class members, the desirability or undesirability of continuing the litigation of these claims in this forum, and the difficulties likely to be encountered in the management of a class action as it relates to the claims in this action. A class action can best secure the economies of time, effort and expense, and promote uniformity in adjudications. Class certification will prevent repeated trial proceedings by thousands of Village residents to establish Aqua's alleged liability for creating a Village-wide water crisis. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiffs' and Class members' claims are manageable.

191. Particular issues under Rule 23(c)(4) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the

disposition of this matter and the parties' interests therein. Such particular issues include, but are not limited to:

- (1) whether Aqua knowingly rushed the Kankakee River water main into service without an operating permit, so it could start delivering Kankakee River water to University Park by the end of 2017, in order to increase its water charges to University Park customers as part of its pending rate case;
- (2) whether Aqua knowingly started adding SeaQuest to the Kankakee River water in University Park in December 2017 without a construction permit or an operating permit for the chemical feed equipment to do that, so Aqua could increase its water charges to University Park customers as part of its pending rate case;
- (3) whether, prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any coupon studies, increased water studies, or additional water testing relative to Kankakee River water and SeaQuest;
- (4) whether, prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any studies or testing to determine what the initial SeaQuest dosage should be in University Park;
- (5) whether, prior to the switch to Kankakee River water in December 2017, Aqua failed to perform any corrosion control studies or any other studies to try to explain the discrepancy regarding whether the inner surfaces of University Park water pipes were covered with a calcium carbonate ( $\text{CaCO}_3$ ) scale;
- (6) whether, prior to the switch to Kankakee River water in December 2017, Aqua did anything to determine whether the SeaQuest would sequester some of the calcium, cause the water to be undersaturated with  $\text{CaCO}_3$ , and lead to the dissolution of  $\text{CaCO}_3$  deposits on the University Park water pipes;
- (7) whether the Snoeyink Report warned that adding SeaQuest to the Kankakee River water would cause the water to be undersaturated with  $\text{CaCO}_3$  and lead to the dissolution of  $\text{CaCO}_3$ -containing scales from the University Park water pipes, and whether Aqua ignored this warning;
- (8) whether, prior to the switch to Kankakee River water in December 2017, Aqua did anything to determine if the different chemistry of the Kankakee River water would release  $\text{CaCO}_3$  deposits from University Park water pipes, and if SeaQuest would increase the magnitude of the release of  $\text{CaCO}_3$  deposits from the pipes after the water switch;

- (9) whether the Snoeyink Report warned that the different chemistry of the Kankakee River water could release CaCO<sub>3</sub> deposits from University Park water pipes, and SeaQuest may increase the magnitude of the release of CaCO<sub>3</sub> deposits from the pipes after the water switch, and whether Aqua ignored this warning;
- (10) whether, prior to the switch to Kankakee River water in December 2017, Aqua did anything to determine if University Park tap water lead values would increase if CaCO<sub>3</sub> deposits covering lead/tin solder and brass fixture surfaces are removed from the water pipes;
- (11) whether the Snoeyink Report warned that University Park tap water lead values could increase if CaCO<sub>3</sub> deposits covering lead/tin solder and brass fixture surfaces are removed from the water pipes, and whether Aqua ignored this warning;
- (12) whether Aqua Aqua did anything to avoid water quality changes (after the switch to Kankakee River water) that would cause the removal of CaCO<sub>3</sub> scales and allow lead to be released into the University Park drinking water;
- (13) whether the Snoeyink Report warned that Aqua should avoid water quality changes (after the switch to Kankakee River water) that would cause the removal of CaCO<sub>3</sub> scales and allow lead to be released into the University Park drinking water, and whether Aqua ignored this warning;
- (14) whether Aqua failed to document—and does not know—the actual amount of SeaQuest that Aqua was adding into the University Park public water supply after the switch to Kankakee River water;
- (15) whether Aqua's calculations of its estimated SeaQuest dosing show, from the date of the water switch to the Do Not Consume, Aqua was adding more SeaQuest to the University Park public water system than it was supposed to add;
- (16) whether the Snoeyink Report warned that SeaQuest dosage control will be especially important to control whether SeaQuest dissolves CaCO<sub>3</sub> scales from the University Park water pipes, and whether Aqua ignored this warning;
- (17) whether Aqua's water switch protocol required Aqua to verify that SeaQuest was being fed into the University Park water system at the correct dosage, and whether Aqua violated this protocol;
- (18) whether Aqua's use of SeaQuest with Kankakee River water in University Park removed the CaCO<sub>3</sub> scale on the inside of the water pipes and caused lead to be released into the drinking water throughout the Village;

- (19) whether Aqua performed any lead and copper testing in University Park tap water within one month after switching the water source to Kankakee River water;
- (20) whether Aqua's water switch protocol required Aqua to perform lead and copper testing in University Park tap water within one month after switching the water source to Kankakee River water, and whether Aqua violated this protocol;
- (21) whether Aqua did anything to investigate the source of the elevated lead in the August 2018 residential tap water testing in University Park;
- (22) whether Chapter 4 of the Lead and Copper Rule required Aqua to provide written notice of the elevated lead in the August 2018 water testing to each of the University Park customers, and whether Aqua violated this Rule by failing to provide this written notice;
- (23) whether it was proper for Aqua to collect one additional water sample to bring the overall lead test results below the EPA lead action level for the August 2018 water testing;
- (24) whether, at the time of the August 2018 water testing, Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume;
- (25) whether, from January 2019 to the Do Not Consume, Aqua continued adding SeaQuest alone in University Park and did nothing to evaluate the rationale for continuing to use SeaQuest in University Park water, as opposed to discontinuing SeaQuest altogether;
- (26) whether, from January 2019 to the Do Not Consume, Aqua did not add an orthophosphate to the SeaQuest in University Park and did nothing to evaluate the rationale for either adding an orthophosphate, or not adding an orthophosphate, in University Park water;
- (27) whether the January 2019 Peotone Study warned that SeaQuest should not be added alone due to the observed increase of lead in the water, and if SeaQuest is needed, an orthophosphate should be added to reduce the lead release in the water, and whether Aqua ignored those warnings;
- (28) whether, at the time Aqua issued the Do Not Consume, Aqua did not know what was causing the elevated lead levels or how widespread it was throughout University Park;
- (29) whether, at the time Aqua issued the Do Not Consume, Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume;

- (30) whether Aqua undertook any type of corrosion control study to investigate the cause of the elevated lead levels in the May 2019 water testing;
- (31) whether, at the time Aqua created the Lead Advisory Area, Aqua could not assure that the finished water coming out of the University Park consumers' taps in the Lead Advisory Area was safe to consume;
- (32) whether, in homes throughout the Do Not Consume and Lead Advisory Area, it was occurring that the tap water lead levels would fluctuate between normal and elevated levels within each home, and from one home to the next;
- (33) whether it was reasonable for customers in University Park who were subject to the Do Not Consume and Lead Advisory Area to think that their water may not be safe to drink out of the tap;
- (34) whether there is any level of lead in drinking water that is safe to consume;
- (35) whether Aqua could not assure that the finished water coming out of every University Park consumer's tap was safe to consume for all consumers subject to the Do Not Consume and/or Lead Advisory Area;
- (36) whether it was appropriate for University Park residents to follow Aqua's guidance in the Do Not Consume and Lead Advisory Area, and abstain from using/consuming their tap water;
- (37) whether the Do Not Consume and Lead Advisory Area encompassed more limitations than simply not drinking the tap water;
- (38) whether all residents who were under the Do Not Consume or in the Lead Advisory Area may have experienced disruptions in their lives, regardless of whether they had their tap water tested for lead;
- (39) whether University Park residents' damages result from Aqua's inability to assure the tap water was safe to consume in homes throughout the Village (including homes in the Lead Advisory Area constructed after 1990), regardless of whether a household had an elevated lead test, and even if they did not drink the tap water prior to the Do Not Consume;
- (40) whether Aqua had a duty to assure that the finished water coming out of every University Park consumer's tap was safe to consume;
- (41) whether Aqua breached its duty to assure that the finished water coming out of every University Park consumer's tap was safe to consume for the households subject to the Do Not Consume and/or Lead Advisory Area;

- (42) whether Aqua caused water that was not assuredly safe to enter Plaintiffs' and Class members' land through a negligent act;
- (43) whether Aqua caused water that was not assuredly safe to invade Plaintiffs' and Class members' interest in the use and enjoyment of their land;
- (44) whether, and to what extent, Plaintiffs and Class members incurred "costs of response" in connection with Aqua's contamination of the Village's water supply, as contemplated by CERCLA;
- (45) whether it was a regular practice for Aqua to put water pipelines into service without an operating permit;
- (46) whether it was a regular practice for Aqua to add chemicals to municipal public water supplies without an operating permit;
- (47) whether it was a regular practice for Aqua to put construction projects into service without an operating permit, and whether the IEPA issued violation notices to Aqua for that conduct;
- (48) whether Aqua intentionally violated an EPA regulation by secretly informing University Park compliance testing consumers to flush the water lines in their homes prior to collecting the water samples, in an effort to artificially lower the lead test results in 2020;
- (49) whether Aqua pumped polluted (not potable) water from the Kankakee Water Treatment Plant into the Kankakee River every day from 2018 (prior to the Do Not Consume) to 2020 without a permit, and whether that constitutes an ongoing illegal discharge of polluted water into the Kankakee River;
- (50) whether, in January 2024, the IEPA issued a violation notice to Aqua for providing public drinking water that Aqua could not assure was safe to consume due to Aqua's failure to properly treat the water;
- (51) whether Aqua acted willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others;
- (52) whether Aqua inflicted a highly unreasonable risk of harm upon its customers in conscious disregard of the risk;
- (53) whether Aqua had knowledge of the impending danger of the release of lead into University Park water, and whether Aqua failed to exercise ordinary care to prevent the danger; and
- (54) whether Aqua has a pattern and practice of engaging in misconduct and violating the law.

**B. Classwide Damages and Relief**

192. Under the circumstances described above, it was reasonable for Plaintiffs and all Class members who were under a “do not consume” or “lead advisory,” *regardless* of whether they had their tap water tested for lead, to take the following measures to protect themselves from the potential and threat of elevated lead in their tap water, and experience the following disruptions in their lives:

- (a) Using bottled or filtered water for drinking, cooking food, washing dishes, and making ice;
- (b) Using bottled or filtered water to wash their face, brush their teeth, or bathe themselves;
- (c) Using bottled water to water their vegetable garden or wash their vegetables, if they were going to eat those vegetables;
- (d) Spending time driving to pick up, or waiting to pick up, bottled water or filters;
- (e) Having difficulty carrying bottled water;
- (f) Spending time replacing filters in faucets or pitchers;
- (g) Spending time reviewing news reports, notifications, or community updates regarding the water quality issues;
- (h) Spending time attending or watching public meetings regarding the water quality issues;
- (i) Being concerned about, or spending time researching, health effects related to the water quality issues;
- (j) Seeking medical care or testing regarding the water quality issues for themselves, loved ones, or pets; and
- (k) Enduring stress, annoyance, discomfort, or inconvenience, or not being able to fully use and enjoy their residence or business.

193. Plaintiffs and all Class members who were under a “do not consume” or “lead advisory,” suffered the following damages:

- (a) Expending out-of-pocket costs for bottled water, filters for water pitchers,

filtration systems, medical bills, temporary lodging, and other expenses;

- (b) Loss of time;
- (c) Loss of income;
- (d) The presence and potential for elevated levels of lead in the drinking water supply throughout the Village has threatened the health of Plaintiffs and Class members, and exposes them to injury and the fear of future injury, including the risk of increased and irreversible health impacts, especially to young children; and
- (e) The lives of Plaintiffs and Class members have been disrupted on a daily basis, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort.

## VII. CAUSES OF ACTION

### COUNT I (CERCLA Cost Recovery)

194. Plaintiffs, individually, and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 193 as paragraph 194 of this Count I, as though fully set forth herein.

195. As previously discussed, “CERCLA liability attaches when a plaintiff establishes that: (1) the site in question is a ‘facility’ as defined by CERCLA; (2) the defendant is a responsible party; (3) there has been a release or there is a threatened release of hazardous substances; and (4) the plaintiff has incurred costs in response to the release or threatened release.” *E.g., Sycamore Indus.*, 546 F.3d at 850.

196. Each Plaintiff and Class member, as well as Defendant, is a “person” as defined by CERCLA. 42 U.S.C. § 9601(21)

197. The Public Water System is a “facility,” as that term is defined by CERCLA, and as the owner and operator of the Public Water System, Aqua is a responsible party. *E.g.*, 42 U.S.C. § 9601(9); 42 U.S.C. § 9607(a)(1).

198. Lead is a “hazardous substance,” as that term is defined by CERCLA. 42 U.S.C. § 9601(14); 40 C.F.R. § 302.4.

199. As set forth above, the leaching of lead (or threatened leaching of lead) into the tap water in Plaintiffs’ and Class members’ homes constituted a “release” or threatened “release” of a “hazardous substance,” as those terms are defined by CERCLA. *E.g.*, 42 U.S.C. § 9601(7); 42 U.S.C. § 9601(8); 42 U.S.C. § 9601(14); 42 U.S.C. § 9601(22); 40 C.F.R. § 302.4.

200. Plaintiffs and Class members incurred costs in connection with the “removal” of lead (*i.e.*, a “released” “hazardous substance”) from the tap water in their homes (*i.e.*, “the environment”). *E.g.*, 42 U.S.C. § 9601(7); 42 U.S.C. § 9601(8); 42 U.S.C. § 9601(14); 42 U.S.C. § 9601(22); 42 U.S.C. § 9601(23); 42 U.S.C. § 9601(25); 40 C.F.R. § 302.4. These “costs of response” include, but are not limited to, those associated with (1) purchasing bottled water or other alternative water supplies to replace the unusable tap water in their homes, (2) purchasing filters and other devices to extract lead from their tap water, (3) seeking medical testing to assess the effect of the lead contamination on their health, or the health of their family members and pets, or to identify any health problems resulting from their potential consumption of lead, and (4) testing, researching, and gathering information regarding the water quality in their homes, as well as the scope, degree, and extent of the lead contamination at issue.

201. Pursuant to 42 U.S.C. § 9607(a)(1)(B), Plaintiffs and the Class are entitled to full reimbursement from Defendant for all of the aforementioned “costs of response” that they incurred as a result of Defendant’s lead contamination.

**COUNT II**  
**(Nuisance)**

202. Plaintiffs, individually, and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 193 as paragraph 202 of this Count II, as though fully set forth herein.

203. A public nuisance is defined as the “doing of or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public.” *E.g., Burns v. Simon Properties Group, LLP*, 2013 IL App (5th) 120325, ¶ 6. In contrast, “a private nuisance is a substantial invasion of another’s interest in the use and enjoyment of his or her land.” *E.g., Dobbs v. Wiggins*, 401 Ill.App.3d 367, 375 (5th Dist. 2010). “A private nuisance, however, that interferes with public rights can also constitute a public nuisance.” *Chicago Nat. League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 365 (1985); *City of Chicago v. Am. Cyanamid Co.*, 355 Ill.App.3d 209, 215 (1st Dist. 2005).

204. Aqua’s actions and inactions constitute both public and private nuisance, as (1) Plaintiffs’ and Class members’ right to access the Public Water Supply is a public right because the Public Water Supply is an indivisible resource shared by the public at large, and (2) Plaintiffs’ and Class members’ ability to use and consume water from the Public Water Supply is crucial to their use and enjoyment of their property. *See, e.g., City of Chicago*, 355 Ill.App.3d at 214-15.

205. Aqua’s actions and inactions resulted in the Public Water Supply to not be “assuredly safe” in quality for ordinary domestic consumption. Aqua’s actions and inactions injuriously affect the safety and health of the public, and cause substantial annoyance, inconvenience, and injury to the public, including Plaintiffs and Class members.

206. Aqua’s actions and inactions resulted in lead leaching into the water, and the threat and uncertainty of lead leaching into the water, it sold and supplied to Plaintiffs and Class members and interfered with their use and enjoyment of their properties. For example, pursuant to Aqua’s “do not consume” notice to Plaintiffs and Class members, Plaintiffs and Class members could not drink or even brush their teeth with their tap water. And Aqua could not

assure that the water was safe to consume for all Plaintiffs and Class members subject to the “lead advisory.”

207. Aqua knew or should have known that its actions and inactions described herein would substantially interfere with Plaintiffs’ and Class members’ reasonable use and enjoyment of their properties, and Aqua recklessly, willfully, and intentionally acted in contravention of the known risks; thus, rendering an award of punitive damages appropriate.

208. As alleged above, Plaintiffs and Class members have incurred substantial damage as a result of Aqua’s actions and inactions constituting a nuisance.

**COUNT III**  
**(Negligence)**

209. Plaintiffs, individually, and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 193 as paragraph 209 of this Count III, as though fully set forth herein.

210. The Village’s Public Water System and the Public Water Supply was in the exclusive control of Aqua.

211. Pursuant to the Act, Aqua owed a duty to Plaintiffs and Class members to provide water to them that is assuredly safe and would not cause, or threaten to cause, lead to leach into their water.

212. Aqua breached its duty to Plaintiffs and Class members by its actions and inactions described herein that allowed lead to leach into, or threaten to leach into, Plaintiffs’ and Class members’ water.

213. If ordinary care was used, the lead would not have leached into Plaintiffs’ and Class members’ water, and there would not have been a threat that lead would leach into Plaintiffs’ and Class members’ water.

214. Aqua also had a duty to promptly warn Plaintiffs and Class members of the leaching of lead or potential for leaching of lead into their water, and to promptly and effectively address and prevent the leaching of lead into the Public Water Supply.

215. The August 2018 residential tap water testing was the first time that lead testing was performed on the water in University Park after the source water switch to Kankakee River water in December 2017. The results of the August 2018 water testing showed that the tap water lead results had a 90<sup>th</sup> percentile that exceeded the 15 ppb EPA lead action level. This water testing showed lead detections in homes above 15 ppb for the *first time in the history* of water sampling in University Park.

216. Because the August 2018 water lead results exceeded the EPA lead action level, Chapter 4 of the Lead and Copper Rule required Aqua to provide written notice of the elevated lead to each of the University Park customers. However, in violation of this Lead and Copper Rule requirement, Aqua did not provide the required written notice of the elevated lead to the University Park customers. Instead, Aqua collected one additional water sample to “dilute” the test results and bring the 90<sup>th</sup> percentile to **0.1 ppb below** the 15 ppb EPA lead action level, and Aqua stopped testing after collecting that one sample.

217. The U.S. EPA required Aqua to admit that it could not ensure the quality of the University Park drinking water from July – December 2018, due to Aqua’s sampling misconduct in the August 2018 lead testing.

218. However, Aqua never informed University Park customers of the elevated lead in their tap water until June 14, 2019, which was after the second round of lead testing conducted in University Park after the source water switch to Kankakee River water.

219. Moreover, Aqua performed no additional water or lead testing to investigate the cause of the elevated lead test results in the August 2018 water testing. Aqua failed to perform a

corrosion control study for the University Park public water system in response to the results of the August 2018 water testing.

220. Aqua did nothing to investigate the source of the elevated lead levels in University Park tap water following the August 2018 testing, which showed elevated lead for the first time in the history of the village.

221. It was foreseeable that Aqua's actions and inactions as described herein would result in the leaching of lead or potential for leaching of lead into Plaintiffs' and Class members' water and supplying them with water that was not assuredly safe.

222. As a direct and proximate result of Aqua's actions and inactions, Plaintiffs and Class members have been damaged, as described above.

**COUNT IV**  
**(Trespass)**

223. Plaintiffs, individually, and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 193 as paragraph 223 of this Count IV, as though fully set forth herein.

224. Plaintiffs and Class members reside/resided, or own/owned property, in the Village during the Class Period and obtain/obtained water in their homes or properties from the Public Water System owned and operated by Aqua.

225. Aqua intentionally discharged SeaQuest into the drinking water supply throughout the Village, which altered the properties of the drinking water supply throughout the Village. This altered drinking water, including SeaQuest, flowed onto the properties of Plaintiffs and Class members.

226. Plaintiffs and Class members did not consent to or permit the flow of SeaQuest or the altered drinking water onto their properties because of the risk that it (i) would allow or tend to allow elevated levels of lead to be deposited into their tap water, and (ii) would create or

would be likely to create a nuisance or render or threaten to render the drinking water supply harmful or detrimental or injurious to public health, safety, or welfare.

227. As a direct and proximate result of Aqua's conduct, altered drinking water, including SeaQuest, flowed onto the properties of Plaintiffs and Class members, which (i) allowed or tended to allow, or created a potential or threat that it would allow or tend to allow, elevated levels of lead to be deposited into their tap water, and (ii) created or likely created a nuisance and rendered or threatened to render the drinking water supply harmful or detrimental or injurious to public health, safety, or welfare.

228. Aqua's trespasses onto Plaintiffs' and Class members' drinking water supply in their homes and properties were intentional, willful and wanton, and/or negligent, and wrongful; thus, rendering an award of punitive damages appropriate.

229. Aqua's trespasses onto Plaintiffs' and Class members' drinking water supply in their homes and properties disrupted the lives of Plaintiffs and Class members, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort, and interfered with Plaintiffs' and Class members' reasonable use and enjoyment of their properties.

230. As a direct and proximate result of Aqua's actions and inactions, Plaintiffs and Class members have been damaged, as described above.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court enter judgment in favor of Plaintiffs and the Class and against Defendant, and pray that the Court:

- A. Certify this action as a Class action on behalf of the Class defined herein, appoint Plaintiffs as the Class representatives, and appoint Plaintiffs' counsel as counsel for the Class;
- B. Enter judgment in favor of Plaintiffs and the Class, and against Defendant;

- C. Award Plaintiffs and the Class members all response costs incurred in connection with Defendant's lead contamination, as contemplated by CERCLA;
- D. Award nominal and punitive damages, and actual damages incurred by Plaintiffs and the Class for all out-of-pocket costs, loss of time, loss of income, injury and fear of future injury, and stress, aggravation, annoyance, inconvenience, and discomfort;
- E. Award Plaintiffs and the Class their attorney's fees and costs of suit, and such other and further relief as the Court deems just and proper.

## **IX. JURY DEMAND**

Plaintiffs demand a trial by jury on all counts so triable.

Plaintiffs Rozita Arnold, Patsy Banks, Adrienne Baugh, Phoebe Beamon, Alicia Benavides, Setian Bey, Rochelle Blocker, Glori Bond, Kari Boykin, Eddie Bradley, Jennifer Branigan, Louis Brooks, Isheona Brown, Shirley Brown, Stephanie Brown, Dolores Buckley, Leroy Burton, Victor Burton, Joyce Calvin-Harmon, Endella Cole, Jacqueline Coleman, Vivian Covington, Lonzell Cross, Christopher Cruz, Leneka Davis, Lorenzo Davis, Ronald Davis, Shavon Davis, Latasha Downing, Diane Doyle, Erica Duncan, Sharon Elliott, Tommie Galloway, Otis Gardner, Todd Gardner, Christopher Graham, Leshem Graham, Elaine Green, Roosevelt Hall, Robert Hawkins, Lydia Henry, Dorothy Hickman, Roger Hickman, Eric Hirsch Jr., Anthony Hudson, Louvon Zelor Humphries, James Jackson, Veta Jackson, Shirley Jackson-Gordon, Zakia Jarrett, Andre Johnson, Charlene Johnson, Crystal Johnson, Dwayne Johnson, Clarence Jones, Irene Jones, Marjorie Jones, Darlissa Jordan, Joseph Lewis, Jennifer Madden, Wilton Martin, Sade McFadden, Yvette Mells, Michael Merrill, Cara Meyers, Deidre Meyers, Carmelita Moore, Mike Ogbara, Deborah Orr, Porchia Pelt, Lolita Perkins, Lisa Plummerel, Henry Porter, Kelly Rembert, Shirley Rivers, Natasha Roberson, James Roberson, Phyllis Saunders, Peggy Sims, Michelle Smith-Williams, George Snyder, Jimmy Sorrell, Hester Spurlock, Laquesha Stephenson, Sylvia Stevens, LaTanya Stewart, John Turner, Tanika Vercher, Robin Walker, Phyllis Warren, Ernestine Watson, Mary White, Cleo Wilder, Gina Williams, Johnny Williams, Marquita Willis, Gregory Wooding, and Sharon Wynn, individually, and on behalf of all others similarly situated,

By: /s/ Thomas A. Zimmerman, Jr.  
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Counsel for the Plaintiffs and Class

**EXHIBIT E**

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Anne Biloche, Reginald Rush, as Special	)	
Administrator of the Estate of Joyce	)	
Bishop, Linda Brown, Marnita Brown,	)	
Tyra Brown, Lula Cole, Theodore Conner,	)	No.
Belinda Dandridge, Renee Flowers,	)	
Laquisha Fowlkes, William Freeman,	)	
Marcia Hall, Tyron Haywood, William	)	
Henderson, Donnie Henry, Yokie Ivy,	)	
Dannen Johnson, Rose Mary Lawhorn,	)	
Torria Lloyd, Samuel Magee, Gail	)	
McGrew, Rhonda Montgomery, Floyd	)	
Moore, Heather Ortiz, James Ray, Gregory	)	
Rogers, Amajeon Rush, Christina	)	
Seymour, Nicole Simmons, Connie	)	
Sydnor, Alfred Thomas, Annie Ward, and	)	
Elijuanita Williams,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
AQUA ILLINOIS, INC., an Illinois	)	
corporation,	)	
	)	
Respondent.	)	
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**INFORMAL COMPLAINT**

Complainants Anne Biloche, Reginald Rush, as Special Administrator of the Estate of Joyce Bishop, Linda Brown, Marnita Brown, Tyra Brown, Lula Cole, Theodore Conner, Belinda Dandridge, Renee Flowers, Laquisha Fowlkes, William Freeman, Marcia Hall, Tyron Haywood, William Henderson, Donnie Henry, Yokie Ivy, Dannen Johnson, Rose Mary Lawhorn, Torria Lloyd, Samuel Magee, Gail McGrew, Rhonda Montgomery, Floyd Moore, Heather Ortiz, James Ray, Gregory Rogers, Amajeon Rush, Christina Seymour, Nicole Simmons, Connie Sydnor, Alfred Thomas, Annie Ward, and Elijuanita Williams (collectively, “Complainants”), by and

through counsel at Zimmerman Law Offices, P.C., bring this complaint against respondent Aqua Illinois, Inc. (“Respondent” or “Aqua”), as follows:

**I. INTRODUCTION**

1. This Informal Complaint arises out of the acts and omissions of Aqua that caused or threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in the Village of University Park, Illinois (the “Village”).

2. Specifically, Aqua (i) caused or threatened or allowed contaminants to be discharged into the drinking water supply throughout the Village, and (ii) altered the properties of the drinking water supply throughout the Village, as did create or was likely to create a nuisance or render the drinking water supply throughout the Village harmful or detrimental or injurious to public health, safety or welfare.

3. Complainants seek damages as a result of Aqua causing or threatening or allowing the contamination of the drinking water supply throughout the Village.

**II. PARTIES**

4. At all relevant times, Complainants Anne Biloche, Reginald Rush, as Special Administrator of the Estate of Joyce Bishop, Linda Brown, Marnita Brown, Tyra Brown, Lula Cole, Theodore Conner, Belinda Dandridge, Renee Flowers, Laquisha Fowlkes, William Freeman, Marcia Hall, Tyron Haywood, William Henderson, Donnie Henry, Yokie Ivy, Dannen Johnson, Rose Mary Lawhorn, Torria Lloyd, Samuel Magee, Gail McGrew, Rhonda Montgomery, Floyd Moore, Heather Ortiz, James Ray, Gregory Rogers, Amajeon Rush, Christina Seymour, Nicole Simmons, Connie Sydnor, Alfred Thomas, Annie Ward, and Elijuanita Williams were residents of the Village of University Park, Illinois. Each Complainant is to be contacted only through their counsel, Zimmerman Law Offices, P.C., 77 West Washington Street, Suite 1220, Chicago, Illinois

60602, *firm@attorneyzim.com*. Zimmerman Law Offices, P.C.'s telephone number is (312) 440-0020, and its facsimile number is (312) 440-4180.

5. Respondent Aqua Illinois, Inc. is an Illinois corporation with its principal place of business located at 1000 S. Schuyler Avenue, Kankakee, Illinois 60901.

6. Pursuant to 83 Ill. Admin. Code 200.100(a), Complainants state that they agree to accept electronic service as provided for in Section 200.1050.

### **III. RELEVANT PROVISIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT**

7. The Illinois Environmental Protection Act ("Act") provides, in relevant part, that "No person shall: (a) Cause or threaten or allow the discharge of any contaminants into the environment in any state so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act...." 415 ILCS 5/12(a).

8. Aqua is an Illinois corporation and, thus, is a "person" as defined by the Act. 415 ILCS 5/3.315.

9. As used in the Act, the term "contaminant" means "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165.

10. The Act defines "water pollution" as "such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into any waters of the state, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life." 415 ILCS 5/3.545.

11. As used in the Act, the term “waters” means “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state.” 415 ILCS 5/3.550.

**IV. AQUA VIOLATED THE ILLINOIS ENVIRONMENTAL PROTECTION ACT**

12. The U.S. Environment Protection Agency defines “environment” as “(1) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (2) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.” 42 C.F.R. § 302.3. *See also* 42 U.S.C. § 9601(8) (definition of “environment” in federal CERCLA statute).

13. “Drinking water supply” means “any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.” 42 U.S.C. § 9601(7).

**A. Aqua Violated the Illinois Environmental Protection Act by Causing or Allowing the Discharge of a Contaminant (*i.e.*, a Chemical) Into the Drinking Water Supply Throughout the Village**

14. Aqua caused or allowed the discharge of a chemical into the drinking water supply throughout the Village. The chemical is a “contaminant” as defined by the Act, because it is a solid or liquid matter. *See* 415 ILCS 5/3.165.

15. Thus, Aqua caused or allowed the discharge of a contaminant (*i.e.*, a chemical) into the environment.

16. The contaminant (*i.e.*, the chemical) that Aqua caused or allowed to be discharged into the environment caused or tended to cause alteration of the physical, thermal, chemical,

biological or radioactive properties of the drinking water supply throughout the Village because the contaminant (*i.e.*, the chemical) caused or tended to cause the drinking water supply to be undersaturated with calcium carbonate (CaCO<sub>3</sub>) and this water chemistry change caused or tended to cause the drinking water supply to remove the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village.

17. The contaminant (*i.e.*, the chemical) that Aqua caused or allowed to be discharged into the environment caused or tended to cause the removal of the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village because that is what the contaminant (*i.e.*, the chemical) is formulated and intended to do.

18. There is no level of lead in drinking water that is safe to consume, and there is no level of lead to consume and have no known or expected risk to health:

- (a) Consuming lead contaminated water can cause damage to a person's brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of their body;
- (b) The greatest risk of lead exposure from consuming lead contaminated water is to young infants, young children, and pregnant women;
- (c) Scientists have linked the effects of lead on the brain with lowered IQ in children, and consuming lead contaminated water can cause lowered IQ in children;
- (d) Adults with kidney problems and high blood pressure can be affected by consuming low levels of lead more than healthy adults;
- (e) Lead from consuming lead contaminated water can be stored in a person's bones and it can be released into the blood later in their life;
- (f) During pregnancy, the child receives lead from the mother's blood which comes from the mother's bones, and may affect the fetus' brain development;
- (g) Infants and children who drink water containing lead in excess of the lead action level could experience delays in their physical or mental development;

- (h) Children who consume lead contaminated water could show slight deficits in attention span and learning abilities; and
- (i) Adults who consume lead contaminated water over many years could develop kidney problems or high blood pressure.

19. The alteration of the physical, thermal, chemical, biological or radioactive properties of the drinking water supply throughout the Village (*i.e.*, the undersaturation of the water with CaCO<sub>3</sub>) that was caused or tended to be caused by the contaminant (*i.e.*, the chemical) that Aqua caused or allowed to be discharged into the environment did create or was likely to create a nuisance or render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare because the altered drinking water supply (*i.e.*, the undersaturation of the water with CaCO<sub>3</sub>) removed or tended to cause the removal of the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village which exposed or tended to expose lead/tin solder and allowed or tended to allow elevated levels of lead to be deposited into the drinking water supply.

20. The contaminant (*i.e.*, the chemical) that Aqua caused or allowed to be discharged into the environment did create or was likely to create a nuisance or render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare because the contaminant (*i.e.*, the chemical) removed or tended to cause the removal of the CaCO<sub>3</sub> deposits coating the inside of the water distribution pipes within the Village which exposed or tended to expose lead/tin solder and allowed or tended to allow elevated levels of lead to be deposited into the drinking water supply.

21. Thus, Aqua caused or allowed the discharge of a contaminant (*i.e.*, a chemical) into the environment so as to cause or tend to cause water pollution in the Village.

**B. Aqua Violated the Illinois Environmental Protection Act by Causing or Threatening or Allowing the Discharge of a Contaminant (*i.e.*, Lead) Into the Drinking Water Supply Throughout the Village**

22. Aqua caused or threatened or allowed the discharge of lead into the drinking water supply throughout the Village. Lead is a “contaminant” as defined by the Act, because it is a solid or liquid matter. *See* 415 ILCS 5/3.165.

23. Thus, Aqua caused or threatened or allowed the discharge of a contaminant (*i.e.*, lead) into the environment.

24. The contaminant (*i.e.*, lead) that Aqua caused or threatened or allowed to be discharged into the environment caused or tended to cause alteration of the physical, thermal, chemical, biological or radioactive properties of the drinking water supply throughout the Village because the contaminant (*i.e.*, lead) caused or threatened or allowed the drinking water supply to be contaminated with elevated levels of lead.

25. As set forth above, there is no level of lead in drinking water that is safe to consume, and there is no level of lead to consume and have no known or expected risk to health.

26. The contaminant (*i.e.*, lead) that Aqua caused or threatened or allowed to be discharged into the environment did create or was likely to create a nuisance or render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare because the contaminant (*i.e.*, lead) caused or tended to cause the drinking water supply to be contaminated with elevated levels of lead.

27. Thus, Aqua caused or threatened or allowed the discharge of a contaminant (*i.e.*, lead) into the environment so as to cause or tend to cause water pollution in the Village.

**V. THE “DO NOT CONSUME” AND “LEAD ADVISORY”**

28. Prior to 2017—when Aqua began to cause or allow the chemical to be discharged

into the drinking water supply throughout the Village—the Village water test results indicated no problem with lead in the drinking water supply in the Village.

29. The contaminant (*i.e.*, the chemical) that Aqua caused or allowed to be discharged into the environment caused or tended to cause alteration of the physical, thermal, chemical, biological or radioactive properties of the drinking water supply throughout the Village and allowed or tended to allow elevated levels of lead to be deposited into the drinking water supply for the *first time in the history* of the Village.

30. The elevated levels of lead in the drinking water supply throughout the Village would not have occurred if Aqua had not discharged a contaminant (*i.e.*, the chemical) into the environment.

31. Some Complainants had elevated levels of lead deposited into the drinking water supply on their properties as shown by lead test results, and other Complainants were threatened with the potential that there could be elevated levels of lead deposited into the drinking water supply on their properties. Either way, all Complainants suffered substantial annoyance and inconvenience, at a minimum. Aqua's actions and inactions interfered with all Complainants' ability to use and consume the drinking water supply on their properties regardless of whether they had an elevated lead test result on their property.

32. Accordingly, on June 14, 2019, all Complainants were instructed to not consume their tap water on their properties (the "do not consume") because of the potential and threat that the finished water coming out of every Complainants' tap was contaminated with elevated levels of lead. Instead, all Complainants subject to the "do not consume" were instructed to use bottled water for drinking, preparing formula, making ice, brushing teeth, and food preparation.

33. On July 29, 2019, the “do not consume” was lifted and replaced with a “lead advisory” for certain Aqua customers in the Village. All Complainants subject to the “lead advisory” were instructed to not consume their tap water on their properties because of the potential and threat that the finished water coming out of every Complainants’ tap in the “lead advisory” was contaminated with elevated levels of lead. Instead, all Complainants in the “lead advisory” were instructed to use bottled water or filters for drinking, preparing formula, making ice, brushing teeth, and food preparation.

34. In Complainants’ properties throughout the “do not consume” and “lead advisory” areas, it was occurring that the tap water lead levels would fluctuate where they were normal at one test, and then days, months, or years later, the lead levels were elevated (*i.e.*, greater than 15 ppb), and then days, months, or years later, they would be normal. The lead levels fluctuated within each property, and from one property to the next.

35. When tap water lead levels are fluctuating between normal and elevated lead levels in Complainants’ properties throughout the “do not consume” and “lead advisory” areas, and Complainants are being advised to alter their water use with bottled water or filters, it was reasonable for all Complainants in the “do not consume” and “lead advisory” areas to think their drinking water supply may not be safe to drink out of the tap.

36. Under these circumstances, it was reasonable for all Complainants who were under a “do not consume” or “lead advisory,” *regardless* of whether they had their tap water tested for lead, to take the following measures to protect themselves from the potential and threat of elevated lead in their tap water, and experience the following disruptions in their lives:

- (a) Using bottled or filtered water for drinking, cooking food, washing dishes, and making ice;
- (b) Using bottled or filtered water to wash their face, brush their teeth, or bathe

themselves;

- (c) Using bottled water to water their vegetable garden or wash their vegetables, if they were going to eat those vegetables;
- (d) Spending time driving to pick up, or waiting to pick up, bottled water or filters;
- (e) Having difficulty carrying bottled water;
- (f) Spending time replacing filters in faucets or pitchers;
- (g) Spending time reviewing news reports, notifications, or community updates regarding the water quality issues;
- (h) Spending time attending or watching public meetings regarding the water quality issues;
- (i) Being concerned about, or spending time researching, health effects related to the water quality issues;
- (j) Seeking medical care or testing regarding the water quality issues for themselves, loved ones, or pets; and
- (k) Enduring stress, annoyance, discomfort, or inconvenience, or not being able to fully use and enjoy their residence or business.

## **VI. DAMAGES**

37. Complainants seek damages as a result of Aqua causing or threatening or allowing the discharge of a contaminant into the environment so as to cause or tend to cause water pollution in the Village, including:

- (a) Expending out-of-pocket costs for bottled water, filters for water pitchers, filtration systems, medical bills, temporary lodging, and other expenses;
- (b) Loss of time;
- (c) Loss of income;
- (d) The presence and potential for elevated levels of lead in the drinking water supply throughout the Village has threatened the health of Complainants, and exposes them to injury and the fear of future injury, including the risk of increased and irreversible health impacts, especially to young children; and

- (e) The lives of Complainants have been disrupted on a daily basis, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort.

**COUNT I**  
**(Nuisance)**

38. Complainants repeat, reallege and incorporate by reference paragraphs 1 through 37 as paragraph 38 of this Count I, as though fully set forth herein.

39. A public nuisance is defined as the “doing of or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public.” *E.g., Burns v. Simon Properties Group, LLP*, 2013 IL App (5th) 120325, ¶ 6. In contrast, “a private nuisance is a substantial invasion of another’s interest in the use and enjoyment of his or her land.” *E.g., Dobbs v. Wiggins*, 401 Ill.App.3d 367, 375 (5th Dist. 2010). “A private nuisance, however, that interferes with public rights can also constitute a public nuisance.” *Chicago Nat. League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 365 (1985); *City of Chicago v. Am. Cyanamid Co.*, 355 Ill.App.3d 209, 215 (1st Dist. 2005).

40. Aqua’s actions and inactions constitute both public and private nuisance, as (1) Complainants’ right to access the drinking water supply of the Village is a public right because the drinking water supply of the Village is an indivisible resource shared by the public at large, and (2) Complainants’ ability to use and consume the drinking water supply of the Village is crucial to their use and enjoyment of their property. *See, e.g., City of Chicago*, 355 Ill.App.3d at 214-15.

41. Aqua (i) caused or threatened or allowed contaminants to be discharged into the drinking water supply throughout the Village, and (ii) altered the properties of the drinking water supply throughout the Village. The contaminant (*i.e.*, the chemical) and the altered drinking water flowed onto the properties of Complainants.

42. The contaminant (*i.e.*, the chemical) and the altered drinking water did create or was likely to create a nuisance or render or threaten to render the drinking water supply throughout the Village harmful or detrimental or injurious to public health, safety or welfare because it allowed or tended to allow, or there was a potential or threat that it would allow or tend to allow, elevated levels of lead to be deposited into the drinking water supply.

43. Aqua's actions and inactions injuriously affect the health, safety and welfare, and cause substantial annoyance, inconvenience, and injury, to the public, including Complainants. As a result of Aqua's actions and inactions, the lives of Complainants have been disrupted on a daily basis, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort, and interfered with their use and enjoyment of their properties.

44. Aqua knew or should have known that its actions and inactions described herein would substantially interfere with Complainants' reasonable use and enjoyment of their properties, and Aqua recklessly, willfully, and intentionally acted in contravention of the known risks; thus, rendering an award of punitive damages appropriate.

45. As a direct and proximate result of Aqua's actions and inactions, Complainants have been damaged.

WHEREFORE, Complainants request that this tribunal enter judgment in favor of Complainants and against Respondent, and pray that the tribunal:

- A. Award nominal and punitive damages, and actual damages incurred by Complainants for all out-of-pocket costs, loss of time, loss of income, injury and fear of future injury, and stress, aggravation, annoyance, inconvenience, and discomfort;
- B. Award Complainants their attorney's fees and costs of suit, and such other and further relief as the tribunal deems just and proper.

**COUNT II**  
**(Negligence)**

46. Complainants repeat, reallege and incorporate by reference paragraphs 1 through 37 as paragraph 46 of this Count II, as though fully set forth herein.

47. Aqua owed a duty to Complainants to:

- (a) Refrain from causing or threatening or allowing contaminants to be discharged into the drinking water supply throughout the Village;
- (b) Refrain from altering the properties of the drinking water supply throughout the Village;
- (c) Refrain from acting or failing to act in such a manner that would create or would be likely to create a nuisance or render or threaten to render the drinking water supply throughout the Village harmful or detrimental or injurious to public health, safety or welfare; and
- (d) Refrain from interfering with Complainants' ability to use and consume the drinking water supply regardless of whether they had an elevated lead test result on their property.

48. Aqua breached its duty to Complainants by:

- (a) Causing or threatening or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution in the Village;
- (b) Causing or threatening or allowing contaminants to be discharged into the drinking water supply throughout the Village, and altering the properties of the drinking water supply throughout the Village, as did create or was likely to create a nuisance or render or threaten to render the drinking water supply throughout the Village harmful or detrimental or injurious to public health, safety or welfare; and
- (c) Interfering with Complainants' ability to use and consume the drinking water supply regardless of whether they had an elevated lead test result on their property.

49. If ordinary care had been used by Aqua, (i) no contaminant would have been caused or threatened or allowed to be discharged into the drinking water supply throughout the Village, (ii) the properties of the drinking water supply throughout the Village would not have been altered,

(iii) elevated levels of lead would not have been deposited or threatened to be deposited into the drinking water supply throughout the Village, (iv) a nuisance would not have been created or likely would not have been created, (v) the drinking water supply throughout the Village would not have been rendered or threatened to be rendered harmful or detrimental or injurious to public health, safety or welfare, and (vi) there would have been no interference with Complainants' ability to use and consume the drinking water supply regardless of whether they had an elevated lead test result on their property.

50. It was foreseeable that Aqua's acts and omissions as described herein would result in (i) a contaminant being caused or threatened or allowed to be discharged into the drinking water supply throughout the Village, (ii) alteration of the properties of the drinking water supply throughout the Village, (iii) depositing or threatening to deposit elevated levels of lead into the drinking water supply throughout the Village, (iv) a nuisance being created or likely to be created, (v) rendering or threatening to render the drinking water supply throughout the Village harmful or detrimental or injurious to public health, safety or welfare, and (vi) the interference with Complainants' ability to use and consume the drinking water supply regardless of whether they had an elevated lead test result on their property.

51. Aqua knew or should have known that its actions and inactions described herein would substantially interfere with Complainants' reasonable use and enjoyment of their properties, and Aqua recklessly, willfully, and intentionally acted in contravention of the known risks; thus, rendering an award of punitive damages appropriate.

52. As a direct and proximate result of Aqua's actions and inactions, Complainants have been damaged.

WHEREFORE, Complainants request that this tribunal enter judgment in favor of Complainants and against Respondent, and pray that the tribunal:

- A. Award nominal and punitive damages, and actual damages incurred by Complainants for all out-of-pocket costs, loss of time, loss of income, injury and fear of future injury, and stress, aggravation, annoyance, inconvenience, and discomfort;
- B. Award Complainants their attorney's fees and costs of suit, and such other and further relief as the tribunal deems just and proper.

**COUNT III**  
**(Trespass)**

53. Complainants repeat, reallege and incorporate by reference paragraphs 1 through 37 as paragraph 53 of this Count III, as though fully set forth herein.

54. Complainants reside/resided or own/owned property in the Village, and obtain/obtained water in their homes or properties from the drinking water supply throughout the Village, during the time when Aqua caused or threatened or allowed the discharge of a contaminant into the environment so as to cause or tend to cause water pollution in the Village.

55. Aqua (i) caused or threatened or allowed contaminants to be discharged into the drinking water supply throughout the Village, and (ii) altered the properties of the drinking water supply throughout the Village. The contaminant (*i.e.*, the chemical) and the altered drinking water flowed onto the properties of Complainants.

56. Complainants did not consent to or permit the flow of a contaminant (*i.e.*, the chemical) or the altered drinking water onto their properties because of the risk that it (i) would allow or tend to allow, or there was a potential or threat that it would allow or tend to allow, elevated levels of lead to be deposited into the drinking water supply, and (ii) would create or would be likely to create a nuisance or render or threaten to render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare.

57. As a direct and proximate result of Aqua's conduct, a contaminant (*i.e.*, the chemical) and the altered drinking water flowed onto the property of Complainants, which (i) allowed or tended to allow, or there was a potential or threat that it would allow or tend to allow, elevated levels of lead to be deposited into the drinking water supply, and (ii) created or likely created a nuisance and rendered or threatened to render the drinking water supply harmful or detrimental or injurious to public health, safety or welfare.

58. Aqua's trespasses onto Complainants' drinking water supply in their homes and properties were intentional, willful and wanton, and/or negligent, and wrongful; thus, rendering an award of punitive damages appropriate.

59. Aqua's trespasses onto Complainants' drinking water supply in their homes and properties disrupted the lives of Complainants, causing considerable stress, aggravation, annoyance, inconvenience, and discomfort, and interfered with Complainants' reasonable use and enjoyment of their properties.

60. As a direct and proximate result of Aqua's actions and inactions, Complainants have been damaged.

WHEREFORE, Complainants request that this tribunal enter judgment in favor of Complainants and against Respondent, and pray that the tribunal:

- A. Award nominal and punitive damages, and actual damages incurred by Complainants for all out-of-pocket costs, loss of time, loss of income, injury and fear of future injury, and stress, aggravation, annoyance, inconvenience, and discomfort;
- B. Award Complainants their attorney's fees and costs of suit, and such other and further relief as the tribunal deems just and proper.

Respectfully submitted,

By: /s/ Thomas A. Zimmerman, Jr.  
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Counsel for the Complainants

**EXHIBIT F**

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex. rel.* KWAME RAOUL, Attorney General )  
of the State of Illinois, and )  
*ex. rel.* JAMES W. GLASGOW, )  
State's Attorney for Will County, Illinois, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AQUA ILLINOIS, INC., an Illinois corporation, )  
 )  
Defendant, )  
 )  
v. )  
 )  
THE VILLAGE OF UNIVERSITY PARK, )  
 )  
Intervenor. )

No. 19CH1208

2024 JUL 10 AM 11:20  
CLERK, CIRCUIT COURT  
WILL COUNTY, ILLINOIS  
FILED

**CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex. rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex. rel.* JAMES W. GLASGOW, State's Attorney for Will County, Illinois, ("Plaintiff"), the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and Defendant, AQUA ILLINOIS, INC., (collectively, the "Parties to the Consent Order"), have agreed to the making of this Consent Order and submit it to this Court for approval.

**I. INTRODUCTION**

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding

the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2022), the Illinois Pollution Control Board (“Board”) regulations, and common law public nuisance alleged in the Complaint, except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

**A. Parties.**

1. On August 16, 2019, a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of Illinois EPA, and James W. Glasgow, State’s Attorney for Will County, on his own motion, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2018), against Aqua Illinois, Inc. (“Defendant”).

2. Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2022).

3. At all times relevant to the Complaint, Defendant was and is an Illinois corporation, with its principal place of business located at 1000 South Schuyler Avenue, Kankakee, Kankakee County, Illinois.

4. Defendant owns and operates the public water system having the assigned Public Water System Identification No. IL1975030 (the “Public Water System”), which is located inside and outside the Village of University Park in Will and Cook Counties, Illinois (“Village”). The Public Water System consists of water mains, pumping stations, and other infrastructural components.

5. Plaintiff alleges that at all times relevant to the Complaint, the Public Water System has been located in an area of Environmental Justice (“EJ”) concern as identified using Illinois EPA EJ Start.

6. On December 2, 2019, Aqua filed its Answer to the Complaint.

**B. Agreed Interim Order.**

1. On November 1, 2019, the Court entered an Agreed Interim Order (the "Agreed Interim Order"). The Agreed Interim Order was not a final resolution of the merits of Plaintiff's Complaint. By entering into the Agreed Interim Order and complying with its terms, Defendant did not affirmatively admit the allegations of violation in the Complaint. This Consent Order supersedes such Agreed Interim Order in its entirety.

**C. Allegations of Non-Compliance.**

Plaintiff contends that Defendant has violated the following provisions of the Act and Board regulations, as well as created and maintained a public nuisance at common law:

Count I: Failure to Provide Assuredly Safe Water in violation of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Board public water supply regulations ("Board PWS Regulations"), 35 Ill. Adm. Code 601.101.

Count II: Violation of Drinking Water Monitoring Site Plan and Sampling Requirements pursuant to Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18(a)(2) and 19 (2018), and Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c).

Count III: Violation of Construction Permit Requirements pursuant to Sections 15(a), 18(a)(2), and 18(a)(3) of the Act, 415 ILCS 5/15(a), 18(a)(2) and 18(a)(3) (2018), and Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200.

Count IV: Operating Permit Violations pursuant to Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(a)(2) and (3) (2018), and Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300.

Count V: Common Law Public Nuisance.

**D. Non-Admission of Violations.**

Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By

entering into this Consent Order and complying with its terms, Defendant does not admit the allegations of violation within the Complaint referenced above, and Defendant's compliance with this Consent Order shall not be interpreted as including any such admission. Defendant specifically denies the alleged violations in the Complaint and states that it is agreeing to this Consent Order to avoid the cost of litigation and further disruption of its operations. Except as expressly set forth in Paragraph II.1., this Consent Order shall not be used in any other proceeding.

**E. Compliance Activities to Date.**

1. Defendant obtained on September 19, 2018 and November 20, 2018, respectively, an Illinois EPA-issued construction permit and operating permit for the Central Avenue Booster Station of Defendant's Public Water System.

2. Defendant obtained on March 27, 2018, an Illinois EPA-issued operating permit for the water transmission main for Defendant's Public Water System.

3. On its own between June 14, 2019 and November 1, 2019, and in accordance with the Agreed Interim Order after November 1, 2019, Defendant provided alternative sources of drinking water comprising bottled water, faucet filter devices certified by NSF/ANSI Standards 42 and 53, and/or pitcher filters certified by NSF/ANSI Standards 42 and 53, as well as replacement filter cartridges for both filter devices, free of charge to customers of the Public Water System included within the area of Defendant's issued "lead advisory", as that term was described in Paragraphs II.A.1. and II.B. of the Agreed Interim Order, (the "Lead Advisory Area").

4. Between at least June 14, 2019 and December 31, 2022, and as further required by the Agreed Interim Order and Illinois EPA-issued permits, Defendant has been collecting compliance samples in its Public Water System beyond the requisite number set forth in 35 Ill. Adm. Code Part 611, Subpart G ("Lead and Copper Rule").

5. Between November 1, 2019 and the date of the entry of this Consent Order, in accordance with the Agreed Interim Order, Defendant participated in meetings of the "Response Team" (as that term was defined in the Agreed Interim Order), conducted customer-requested tap water sampling, offered customer-requested blood lead level testing, and maintained a dedicated website.

6. On November 30, 2019, consistent with the Lead and Copper Rule and as required by the Agreed Interim Order, Defendant submitted a report to Plaintiff and Illinois EPA presenting the performed comprehensive corrosion control studies and the then-resulting optimal corrosion control treatment recommendation for Illinois EPA's review and approval, which recommendation Defendant revised on August 4, 2020.

7. On April 17, 2020, Illinois EPA issued to Defendant "Public Water Supply Construction Permit No. 1020-FY2020" for a phosphoric acid chemical treatment system (the "April 2020 Construction Permit"). On April 17, 2020, Illinois EPA issued to Defendant "Operating Permit No. 1020-FY2020" for the phosphoric acid chemical treatment system (the "April 2020 Operating Permit"). After April 17, 2020, Defendant implemented the April 2020 Construction Permit and the April 2020 Operating Permit.

8. On July 30, 2021, Illinois EPA issued to Defendant "Public Water Supply Construction Permit No. 0071-FY2022" to switch to a zinc orthophosphate corrosion control chemical in the Public Water System (the "July 2021 Construction Permit"). On August 3, 2021, Illinois EPA issued to Defendant "Operating Permit 0071-FY2022" to switch to a zinc orthophosphate corrosion control chemical in the Public Water System ("August 2021 Operating Permit"). After July 30, 2021 and August 3, 2021, Defendant implemented the July 2021 Construction Permit and August 2021 Operating Permit, respectively.

9. For the July 1 - December 31, 2021 six-month compliance sampling period, Defendant met the 90th percentile lead action level pursuant to the Lead and Copper Rule.

10. On February 17, 2022, Defendant submitted an optimal corrosion control treatment recommendation to Illinois EPA, revising its August 4, 2020 recommendation and identifying zinc orthophosphate as the optimal treatment (the "February 17 OCCT Recommendation").

11. On March 23, 2022, Illinois EPA issued to Defendant "Public Water Supply Construction Permit No. 0641-FY2022" regarding Defendant's installation of a sulfuric acid feed system consisting of a chemical feed pump (maximum capacity of 3.17gph), scale, piping, controls, and appurtenances at Defendant's Central Avenue Booster Station.

12. For the January 1 - June 30, 2022 six-month compliance sampling period, Defendant met the 90th percentile lead action level pursuant to the Lead and Copper Rule.

13. On August 8, 2022, Illinois EPA issued to Defendant a Special Exception Permit for its Public Water System that approved the February 17 OCCT Recommendation.

14. On August 30, 2022, Illinois EPA issued to Defendant a Special Exception Permit for its Public Water System that set optimal water quality parameter ranges and monitoring frequencies. The August 30, 2022 Special Exception Permit was replaced and superseded by a Special Exception Permit that Illinois EPA issued to Defendant for its Public Water System on December 28, 2022.

15. Between June 14, 2019 and December 31, 2022, Aqua reported to Illinois EPA the results of more than 2,850 compliance samples collected by Defendant from customers served by Defendant's Public Water System.

16. For the June 1 - December 31, 2022 six-month compliance sampling period, Defendant met the 90th percentile lead action level pursuant to the Lead and Copper Rule.

17. On June 29, 2022, Illinois EPA issued to Defendant a Special Exception Permit for its Public Water System that set forth monitoring requirements. Defendant appealed certain conditions of such Special Exception Permit to the Board (PCB 23-12). On December 15, 2022, the Board entered an Opinion and Order, denying Defendant's appeal of certain conditions of the June 29, 2022 Special Exception Permit as moot (PCB 23-12). On January 20, 2023, Defendant filed a Petition for Review of the Board's December 15, 2022 Opinion and Order in the Appellate Court of Illinois for the Third District (Appeal No. 03-23-0023). On June 14, 2023, Illinois EPA issued to Defendant a Special Exception Permit that, among other things, approved annual compliance sampling for its Public Water System. On June 29, 2023, Defendant filed its Substituted Unopposed Motion to Voluntarily Dismiss Petition for Review before the Appellate Court of Illinois for the Third District (the "Appeal Dismissal Motion"). On June 29, 2023, the Appellate Court of Illinois for the Third District entered an Order, granting the Appeal Dismissal Motion and dismissing Appeal No. 03-23-0023.

18. With Illinois EPA's issuance of the June 14, 2023 Special Exception Permit, the compliance sampling period changed to January 1 – September 30, 2023. Each of the compliance sampling results for the Public Water System that Defendant submitted to the Safe Drinking Water Information System (SDWIS) for the period January 1 – September 30, 2023 have been below 15 micrograms per liter (ug/l).

**F. Defendant's Additional Activities.** In addition to the compliance activities described in Section I.E. above, Defendant completed the following (with the dollar amounts being estimated by Defendant):

1. waived water service billing for individuals within the Lead Advisory Area for water usage between May 15, 2019 and January 14, 2022, with a value of over \$3,385,000.00;
2. waived sewer service billing for individuals within the Lead Advisory Area for sewer service between approximately May 15, 2019 and July 15, 2019, and capped sewer service charges for individuals within the Lead Advisory Area for sewer service between August 1, 2019 and October 31, 2021, at a total cost of \$431,000.00;
3. distributed, through its distribution center and homebound deliveries since on or about June 14, 2019:

Bottled Water: 2,136,081 gallons  
Pitcher Filters and Faucet Filter Devices: 6,277  
Cartridge Replacements: 11,640; and

4. expended, as estimated by Defendant, over \$4,000,000.00 since on or about June 14, 2019, (a) to provide bottled water, filters, filter devices and replacement cartridges, (b) on laboratory work and identifying the optimal corrosion control treatment for Defendant's Public Water System, and (c) to address the impact of internal home lead plumbing sources on tap water quality.

## **II. APPLICABILITY**

1. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, managers, members, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. Plaintiff may use this Consent Order against Defendant in any subsequent

enforcement action or permit proceeding as provided by Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2022).

2. Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of the entry of this Consent Order. In addition, Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

3. No change in ownership, corporate status or operator of the Public Water System shall in any way alter the responsibilities of Defendant under this Consent Order. In the event that Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, Defendant shall notify Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Public Water System or a portion thereof. Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant site access and all cooperation necessary for Defendant to perform to completion any compliance obligations required by this Consent Order. Defendant shall provide a copy of this Consent Order to any such successor in interest, and Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, Defendant and a proposed purchaser or operator of the Public Water System may jointly request, and Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements

of this Consent Order in place of, or in addition to, Defendant. This provision does not relieve Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable Public Water System permits.

### III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

#### **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

##### **A. Civil Penalty.**

1. To the extent that following the completion of first, Defendant's payments for the Technical Assistance Program remediation work as described in and conducted pursuant to Paragraph III.E.1.c.iv. below, and second, Defendant's payments of the beneficial project contributions pursuant to Paragraph III.E.2.a. below, any of the \$900,000.00 amount described in Paragraph III.E.1.e. below remains unspent (the "Remaining Settlement Monies"), no later than fifteen (15) business days thereafter, Defendant shall pay a civil penalty of up to Two Hundred Thousand Dollars (\$200,000.00) as follows:

- a. a certified check or money order in the amount of eighty percent (80%) of the Remaining Settlement Monies (up to \$160,000.00) payable to Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") to

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276;

with a copy to:

Kathryn A. Pamerter  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602; and

- b. a certified check or money order in the amount of twenty percent (20%) of the Remaining Settlement Monies (up to \$40,000.00) to the County of Will to:

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432

- c. The case name and case number shall appear on the face of the certified checks or money orders.

**B. Stipulated Penalties, Interest and Default.**

1. If Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, Defendant shall provide notice to Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first fifteen (15) days of violation, \$500.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. However, failure by Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the

date Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. If Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

**C. Stipulated Penalty and Interest Payment Procedures.**

1. All payments required by Section III.B of this Consent Order shall be made by certified check or money order payable to Illinois EPA for deposit into the EPTF; *provided, however,* that any stipulated penalties and/or interest due solely for a late civil penalty payment to the County of Will shall be made by certified check or money order payable to the County of Will. Payments to the EPTF shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

with a copy to:

Kathryn A. Pamerter  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

Payments to the County of Will shall be sent by first class mail and delivered to:

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432

2. The case name and case number shall appear on the face of the certified check or money order.

**D. Future Compliance.**

1. **Compliance Sampling.** Defendant shall utilize the following procedures for lead compliance sampling of its Public Water System:

- a. For each lead compliance sampling event, Defendant shall comply with the sample collection requirements of 35 Ill. Adm. Code 611.1356(b) (formerly 35 Ill. Adm. Code 611.356(b)).
- b. For each lead compliance sampling event (subject to Paragraph III.D.10. below), Defendant shall collect a lead compliance sample from homes in its lead compliance sampling pool and select the homes by utilizing the random number generator function of Microsoft Excel.

- c. All compliance samples may be collected either by Defendant directly or by customers using sampling supplies and written instructions provided by Defendant (subject to Paragraph III.D.10. below).
- d. Pursuant to 35 Ill. Adm. Code 611.1356(a)(1)(D) (formerly 35 Ill. Adm. Code 611.356(a)(1)(D)), Defendant shall exclude homes from its compliance sampling pool selection process if a home has a point of use treatment device that cannot be bypassed.
- e. Defendant may exclude homes from its compliance sampling pool selection process if a home has experienced a plumbing disturbance within seventy-five (75) days of the proposed sampling date, or if a home does not provide Customer Cooperation (as defined in Paragraph III.D.10. below) with respect to a prior sampling event.
- f. Defendant shall not conduct lead compliance sampling in any home at which Defendant performed any technical assistance within thirty (30) days prior to the date of the lead compliance sampling event.
- g. When any technical assistance provided to homes in the compliance sampling pool identifies the presence of lead solder debris in kitchen or bathroom aerators, Defendant shall collect and analyze the chemical composition of the debris if the debris is of sufficient quantity to collect.
- h. Notwithstanding all other applicable requirements of the Lead and Copper Rule, within fifteen (15) days of the completion of each lead compliance sampling period, Defendant shall submit to Illinois EPA a written summary of the lead compliance sampling conducted during such period, which

summary shall contain the following information: the number of compliance samples collected; the results of the lead compliance sampling; a summary of any technical assistance provided prior to the collection of each lead compliance sample (outside of the Technical Assistance Program described in Section III.E.1. below); the date that such technical assistance was provided; whether debris was found in aerators within the home; whether debris found within aerators was analyzed by a laboratory; and the results of any debris analysis.

- i. Defendant shall bypass, or provide instructions to the customer regarding how to bypass, any faucet filter prior to collecting lead compliance samples from such faucet. Defendant shall not include in its required compliance sampling any sample of water that has passed through a faucet filter.

**2. Change in Lead Advisory Area Designation.** Commencing on the date of the entry of this Consent Order, the “Lead Advisory Area” shall be referred to thereafter as the “Customer Resources Area”.<sup>1</sup>

**3. Bottled Water.**

- a. No sooner than thirty (30) days after the date of the entry of this Consent Order, Defendant may discontinue its distribution of bottled water to customers in the Customer Resources Area; *provided, however*, that within fourteen (14) days of the date of the entry of this Consent Order, Defendant

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<sup>1</sup> For clarity, the change from “Lead Advisory Area” to “Customer Resources Area” is a name change only, which occurs on the date of the entry of this Consent Order. For privacy reasons, a list of Defendant’s customers within the Customer Resources Area is not attached to this Consent Order. Defendant certifies that prior to the filing of the Motion to approve this Consent Order, it provided to Illinois EPA a current, complete list of Defendant’s customers within the Customer Resources Area.

shall send via regular U.S. mail a written notice of such discontinuation to all customers in the Customer Resources Area, a true and correct copy of which is attached hereto as Group Exhibit A and incorporated herein by reference.

- b. At any point after Defendant's discontinuation of the provision of bottled water in accordance with Paragraph III.D.3.a. above, and continuing until the termination of this Consent Order in accordance with Section III.K. below, Defendant shall provide, at its distribution center, bottled water, free of charge, to any customer located in the Customer Resources Area with a result from compliance sampling (Paragraph III.D.1.), customer-requested sampling (Paragraph III.D.5.), or Technical Assistance Program sampling (Section III.E.), of 100 parts per billion ("ppb") or higher until such customer's respective sampling results do not exceed 100 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event; *provided, however*, that Defendant shall deliver bottled water to any such customer that is homebound.

**4. Filters.**

- a. No sooner than sixty (60) days after the date of the entry of this Consent Order, Defendant may discontinue its distribution of filter devices/replacement filter cartridges to customers in the Customer Resources Area; *provided, however*, that within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send via regular U.S. mail a written notice of such discontinuation to all customers in the

Customer Resources Area, a true and correct copy of which is attached hereto as Group Exhibit A and incorporated herein by reference.

- b. At any point after Defendant's discontinuation of the provision of filter devices/replacement filter cartridges in accordance with Paragraph III.D.4.a. above, and continuing until the termination of this Consent Order in accordance with Section III.K. below, Defendant shall provide, at its distribution center, faucet filter devices certified by NSF/ANSI Standards 42 and 53, or pitcher filters certified by NSF/ANSI Standards 42 and 53, with the respective replacement filter cartridges for both filter devices, free of charge, to any customer located in the Customer Resources Area with a result from compliance sampling (Paragraph III.D.1.), customer-requested sampling (Paragraph III.D.5.), or Technical Assistance Program sampling (Section III.E.), of 15 ppb or higher until such customer's respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event; *provided, however*, that Defendant shall deliver such filter devices and replacement cartridges to any such customer that is homebound. Contemporaneously with the provision of a faucet filter device or pitcher filter in accordance with this Paragraph III.D.4.b., Defendant shall provide the customer with a reminder notice regarding, at a minimum, (i) the proper usage of faucet filter devices, pitcher filters, and replacement filter cartridges for both filter devices, (ii) the availability of

replacement filter cartridges, (iii) how to install replacement filter cartridges, and (iv) the timeframes for installing such replacements.

**5. Customer-Requested Sampling.** Notwithstanding anything to the contrary set forth in this Consent Order, commencing upon the date of the entry of this Consent Order and continuing until the date which is one hundred and eighty (180) days after the date of the entry of this Consent Order,

- a. upon request of any customer of the Public Water System (as often as once per month), Defendant shall collect and analyze that customer's kitchen cold water tap for the presence of lead, without charge to the customer;
- b. within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send via regular U.S. mail (i) Group Exhibit A to all customers of the Public Water System in the Customer Resources Area, and (ii) Exhibit B, a true and correct copy of which is attached hereto and incorporated herein by reference, to all customers of the Public Water System not in the Customer Resources Area, which exhibits include a description regarding the availability of customer-requested sampling;
- c. all customer-requested samples may be collected either by Defendant directly or by customers using sampling supplies and written instructions provided by Defendant (subject to Paragraph III.D.10. below);
- d. Defendant shall maintain, and make available to Illinois EPA upon written request, a log of all customer-requested sampling that it conducts, which log shall include, at a minimum, for each customer:

- i. The date on which the customer initially contacted Defendant to request sampling of such customer's tap water;
  - ii. The date on which the customer's tap water was sampled;
  - iii. The company that conducted the lab analysis;
  - iv. The results of such sampling;
  - v. The dates and results of all subsequent sampling events at the customer's residence or business;
  - vi. A summary of any issues that occurred with respect to any sampling event at the customer's residence or business; and
  - vii. The sampling protocol used to conduct such sampling;
- e. Defendant shall consider, as compliance sampling, the result of any sample collected pursuant to this Paragraph III.D.5. that meets all of the criteria for compliance sampling set forth in 35 Ill. Adm. Code 611.1356 (formerly 35 Ill. Adm. Code 611.356) and include such sample in its calculation of the 90th percentile lead action level for the corresponding sampling period;
- f. Defendant shall send a copy of the customer-requested sampling results to each corresponding customer via regular U.S. mail within five (5) business days of receipt; and
- g. Defendant may satisfy its sampling collection obligations under this Paragraph III.D.5 by (i) providing a sampling kit with instructions to the customer, and (ii) promptly picking up the sample taken by the customer following notification from the customer that the sample is available.

6. **Nitrate Variability.** Commencing upon the date of the entry of this Consent Order and continuing until the earlier to occur of (a) one year after the date of the entry of this Consent Order, or (b) the date of Illinois EPA's written approval otherwise, Defendant shall, to the extent that nitrate at the entry point to Defendant's Public Water System is detected above seven (7) milligrams per liter, (i) conduct a one-time sampling event by collecting a minimum of 20 lead non-compliance samples from its lead compliance sampling pool, and a nitrate sample from the entry point to Defendant's Public Water System, within 5-15 days of the detection, and (ii) provide the results to Illinois EPA within seven (7) days of receipt. Defendant may satisfy its obligations to collect non-compliance samples under this Paragraph III.D.6. by (y) providing sampling kits with instructions to at least thirty (30) randomly selected customers within its compliance sampling pool within 5-15 days of the detection of nitrate above seven (7) milligrams per liter at the entry point to Defendant's Public Water System, and (z) promptly picking up the samples taken by such customers following notification from the customer that the collected sample is available.

7. **Website.** Commencing upon the date of the entry of this Consent Order and continuing until the Technical Assistance Program Termination Date (as defined in Paragraph III.E.1. below and, for the sake of clarity, subject to Paragraph III.E.1.g. below), Defendant shall continue to maintain its dedicated website, WaterFactsIL.com, and shall include on such website, at a minimum, (a) all information located on the website as of the date of the entry of this Consent Order, and (b) all additional compliance sampling results (with addresses redacted). Within two (2) business days of mailing the Residential Information Letter (as defined in Paragraph III.E.1.a.i. below), Defendant shall upload a copy of such letter to its website.

8. **No Modification of Corrosion Control Treatment without Illinois EPA Approval.** Commencing upon the date of the entry of this Consent Order, Defendant shall not

change its method of corrosion control treatment in the Public Water System unless and until it receives prior written authorization from Illinois EPA pursuant to the requirements of 35 Ill. Adm. Code Part 602.

**9. Appeals.** Defendant retains its right to appeal, consistent with Section 40 of the Act, 415 ILCS 5/40 (2022), and applicable regulations, any permit with conditions, or permit denial, that Illinois EPA issues with respect to the Public Water System.

**10. Customer Cooperation.** The Parties to the Consent Order acknowledge that various inspection, tap sampling, and corrective action obligations of this Consent Order can be completed by Defendant only with customer cooperation during regular business days, Monday through Friday, excluding national and state holidays, at mutually acceptable times. For purposes of this Consent Order, "Customer Cooperation" shall mean: "(a) authorizing entry into the customer's residence to conduct (i) compliance or technical assistance program sampling, (ii) any inspections of the plumbing, (iii) corrective actions if the lead level exceeds 15 ppb, and/or (iv) other Technical Assistance Program work pursuant to Section III.E.1. below.; and (b) the customer's compliance with sampling instructions provided by Defendant". Notwithstanding any other provision of this Consent Order to the contrary, Defendant shall not be required to complete an otherwise applicable Consent Order requirement with respect to a customer who has declined to provide Customer Cooperation. A customer shall be deemed to have declined cooperation if the customer (i) provides a letter or email to Defendant declining Defendant's request for cooperation, or (ii) fails to provide Customer Cooperation following three (3) attempts by Defendant to obtain cooperation (at least one of the three attempts must include written materials explaining the necessary cooperation); *provided, however,* that Defendant shall grant at least ten (10) days between each attempt and before Defendant makes a determination that a customer has failed to

cooperate. Defendant shall maintain a customer cooperation log, a true and correct copy of the form of which is attached hereto as Exhibit C and incorporated herein by reference, and all related letters and emails from customers, a copy of each of which shall be sent to Illinois EPA on the first and fifteenth day of each month (or the next business day to the extent such day falls on a Saturday, Sunday or holiday). Each customer cooperation log that Defendant submits to Illinois EPA shall contain then-current information up to three (3) business days prior to the date of such log submission. Notwithstanding anything to the contrary in this Paragraph III.D.10., for each lead compliance sampling event, Defendant shall comply with the requirements of 35 Ill. Adm. Code 611.1356(d) (formerly 35 Ill. Adm. Code 611.356(d)) as to the number of compliance samples that must be collected for the Public Water System.

11. **Right of Entry.** Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Will County State's Attorney, his employees and representatives, shall have the right of entry into and upon the Public Water System, which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Will County State's Attorney, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

12. **Compliance with Laws.** This Consent Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, the Board regulations, and the Lead Service Line Replacement and Notification Act, Public Act 102-0613, as each may be updated, amended, or modified prior to the termination of this Consent Order in accordance with Paragraph III.K. below.

13. **Cease and Desist.** Defendant shall cease and desist from future violations of the Act and Board regulations that were alleged in the Complaint.

**E. Beneficial Project.** In addition to Defendant's Additional Activities described in Section I.F. above and the payment as set forth in Section III.A. above, the Parties to the Consent Order agree that Defendant shall perform, or cause to be performed, the following beneficial project:

1. ***Technical Assistance Program for Residential Customers in the Customer Resources Area.*** Commencing upon the date of the entry of this Consent Order and, subject to the requirements in Paragraph III.E.1.g. below, continuing for one year thereafter (the "Technical Assistance Program Termination Date"), Defendant shall establish, fund and implement a "Technical Assistance Program" benefitting Defendant's customers that own and/or lease a residential house, condominium unit, or apartment unit in the Customer Resources Area (each, a "Residential Customer"), as follows:

a. ***Technical Assistance Program Notification Requirements.***

i. Within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send to all of its Residential Customers an information letter (the "Residential Information Letter") and a participation agreement (the "Residential Participation Agreement"), a true and correct copy of the substantially final form of each of which is attached hereto as Group Exhibit A and incorporated herein by reference.

- ii. Within 60-65 days and 120-125 days of the date of the entry of this Consent Order, Defendant shall send a written notice to all of its Residential Customers reminding such customers of the process to sign-up for the Technical Assistance Program and the corresponding deadline.
  - iii. Until the passage of the sign-up deadline set forth in Paragraph III.E.1.b. below, Defendant shall include within each water and sewer bill sent to all of its Residential Customers, a reminder of the deadline to sign-up for the Technical Assistance Program and the website address (WaterFactsIL.com) for obtaining additional information.
  - iv. Until the passage of the sign-up deadline set forth in Paragraph III.E.1.b. below, Defendant shall post on its website (WaterFactsIL.com) the Residential Information Letter, the deadline to sign-up for the Technical Assistance Program, and the instructions to sign-up for the Technical Assistance Program.
  - v. Within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall submit a press release to the Daily Southtown and WUPC-TV regarding the Technical Assistance Program, the process for signing up for the Technical Assistance Program, and the corresponding deadline for sign-up.
- b. ***Technical Assistance Program Sign-up Deadline.*** Residential Customers shall have two hundred and forty days (240) from the date of the entry of

this Consent Order to sign up for the Technical Assistance Program. To sign up for the Technical Assistance Program, a Residential Customer must provide Defendant with an executed Residential Participation Agreement prior to the sign-up deadline.

- c. ***Technical Assistance Program Steps.*** Within thirty (30) days of the date that each Residential Customer signs up for the Technical Assistance Program, Defendant shall schedule work to commence the following applicable steps at each such Residential Customer's residence. Subject to Paragraph III.E.1.g. below, Defendant shall complete the following applicable steps at each Residential Customer's residence on or before the Technical Assistance Program Termination Date, all of which shall be free of charge to such Residential Customer.
  - i. Collect a pre-inspection sample for lead from the residence's kitchen cold water tap pursuant to the protocol described in Paragraph III.E.1.d. below.
  - ii. To the extent that the pre-inspection sample result is above 15 ppb for lead, perform an in-residence inspection. The in-residence inspection shall include at a minimum, where determined necessary, the following elements: kitchen faucet aerator cleaning and/or replacement; readily visible inspection of the plumbing configuration with a specific emphasis on identifying the presence of lead solder joints and lead solder application technique; water softener education; inspection of any faucet filter or pitcher filter in

use to ensure the Residential Customer is using, and can use, the filter correctly; and replacement filter cartridge education. When any in-residence inspection identifies the presence of lead solder debris in kitchen aerators, Defendant shall collect and analyze the chemical composition of debris if of sufficient quantity for laboratory analysis.

- iii. To the extent that an in-residence inspection is performed, collect a post-inspection tap water sample for lead from the residence's kitchen cold water faucet pursuant to the protocol described in Paragraph III.E.1.d. below, no earlier than fourteen (14) days after Defendant's completion of the in-residence inspection.
- iv. To the extent that a post-inspection sample result exceeds 15 ppb for lead, the corresponding house, condominium unit, or apartment unit will be eligible for remediation of lead solder and/or lead-containing fixtures at the kitchen faucet (a "Remediation-Eligible Residence") up to the cost of \$3,500.00 per Remediation-Eligible Residence to be paid in accordance with Paragraph III.E.1.e. below. Within five (5) business days after determining that a house, condominium unit, or apartment unit constitutes a Remediation-Eligible Residence, Defendant shall provide the owner and/or lessee of such Remediation-Eligible Residence a fact sheet, a true and correct copy of which is attached hereto as Exhibit D and incorporated herein by reference, that explains how such Residential Customer may arrange

for an Illinois-licensed third-party plumber to conduct remediation of lead solder and/or lead-containing fixtures at the kitchen faucet, the payment for which shall be paid in accordance with Paragraph III.E.1.e. below up to the cost of \$3,500.00 per Remediation-Eligible Residence (the "Remediation-Eligible Residence Fact Sheet"). The Remediation-Eligible Residence Fact Sheet shall also (aa) grant each corresponding Residential Customer sixty (60) days to schedule an appointment with the Illinois-licensed third-party plumber or report to Defendant any difficulty in doing so; (bb) provide instructions for the Residential Customer to schedule with Defendant the collection of a post-remediation work kitchen tap cold water sample for lead; *provided, however*, that such sample shall be collected no earlier than seventy-five (75) days after the completion of the kitchen faucet remediation work and in accordance with the protocol set forth in Paragraph III.E.1.d. below; and (cc) state that if the post-remediation work sample is above 15 ppb for lead, the customer would receive free filter devices for the kitchen faucet from Defendant until such customer's respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event.

- d. ***Technical Assistance Program Sample Collection Process.*** For all Technical Assistance Program samples, Defendant shall utilize the following protocol:

- i. Each sample may be collected either by Defendant directly or by customers using sampling supplies and written instructions provided by Defendant (subject to Paragraph III.D.10. above). Such written instructions shall advise the customers regarding how to bypass a faucet filter prior to collecting samples from such faucet, should such customer have a point of use treatment device that may be bypassed.
- ii. Each sample shall be collected from the kitchen tap after a six-hour stagnation, and no aerator removal or cleaning shall be conducted within 96 hours prior to the day of such sample collection.
- iii. All samples shall equal 1 liter in volume, collected in 500-milliliter sequential samples.
- iv. Defendant may decide not to process any sample based on paperwork deficiencies or other issues, including without limitation, inadequate volume, sample taken from the wrong tap, and suspicion of sampling error or tampering; *provided, however*, that Defendant shall prepare documentation regarding the issue and submit such documentation on a monthly basis to Illinois EPA on the fifth (5th) business day of each month for the preceding month. In any of the foregoing instances, Defendant shall attempt to collect a replacement sample and document any such attempt(s).

- v. Defendant shall send all collected Technical Assistance Program samples to a laboratory that meets the certification requirements of 35 Ill. Adm. Code 611.490.
  - vi. Defendant shall cause the Technical Assistance Program samples to be analyzed for lead and, at the discretion of Defendant, tin.
  - vii. In addition to the reporting requirements described in Paragraph III.E.1.f. below, Defendant shall send a copy to customers of their respective sampling results via regular U.S. mail within five (5) business days of receipt.
- e. ***Funding for Remediation of Lead Solder and/or Lead Containing Fixtures at the Kitchen Faucet in Remediation-Eligible Residences.***
- i. Defendant agrees to pay up to Nine Hundred Thousand Dollars (\$900,000.00) for the costs of remediation of lead solder and/or lead-containing fixtures at the kitchen faucet as described in Paragraph III.E.1.c.iv. above, up to the cost of \$3,500.00 per Remediation-Eligible Residence.
  - ii. Subject to Paragraph III.E.1.e.i., within thirty (30) days of being provided a copy of the invoice from the Illinois-licensed third-party plumber, Defendant shall pay such plumber retained by the owner and/or lessee of each Remediation-Eligible Residence, up to the sum of \$3,500.00 per Remediation-Eligible Residence.
  - iii. To the extent that Defendant has not expended \$900,000.00 upon completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences

(as described in Paragraph III.E.1.c.iv. above), up to the sum of \$3,500.00 per Remediation-Eligible Residence, Defendant shall pay the beneficial project contributions as set forth in Paragraph III.E.2.a. below and then utilize any Remaining Settlement Monies for the payment of a civil penalty to the EPTF and the County of Will in accordance with Section III.A. above.

f. ***Reporting Requirements to Plaintiff and Illinois EPA.*** No later than ten (10) business days after the end of each month, Defendant shall for the prior month:

- i. submit to Plaintiff and Illinois EPA, for each house, condominium unit and apartment unit, the date that each Residential Customer signed up for the Technical Assistance Program; the date of each pre-inspection sample, residence inspection, and post-inspection sample conducted; the results of all pre- and post-inspection sampling conducted; the date on which the Remediation-Eligible Residence Fact Sheet was sent to the owner and/or lessee of each Remediation-Eligible Residence; documentation regarding any issue pursuant to Paragraph III.E.1.d.iv. above; a summary of any provided technical assistance, including any remediation of lead solder and/or lead-containing fixtures at the kitchen faucet; a summary of any unperformed remediation work; the date and corresponding address of Defendant's receipt of each invoice for remediation of lead solder and/or lead-containing fixtures at the

kitchen faucet; the date and corresponding address of the payment of each such invoice; and a list of all Residential Customers who requested a post-remediation work sample, the date of such request, the date the post-remediation work sample was taken, and the results of such sampling; and

- ii. submit to Plaintiff and Illinois EPA the amount of monies expended during the prior month and cumulatively to date for the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above), and the payment of the beneficial project contributions as set forth in Paragraph III.E.2.a. below.
- g. ***Technical Assistance Program Caveats.*** Notwithstanding anything in this Consent Order to the contrary,
  - i. Defendant shall continue to completion all technical assistance, including, subject to Paragraph III.E.1.g.ii., remediation of lead solder and/or lead-containing fixtures at the kitchen faucet, at each house, condominium unit, and apartment unit, still in-progress as of the Technical Assistance Program Termination Date, and shall continue to submit to Illinois EPA the reports required under Paragraph III.E.1.f. above until all technical assistance still in-progress as of the Technical Assistance Program Termination Date is completed.

- ii. Defendant's obligation to arrange for and fund remediation work under the Technical Assistance Program (which, for the sake of clarity, does not include post-remediation work sampling and, where needed, the provision of bottled water and filter devices) will terminate upon the payment of up to \$900,000.00 toward the costs of remediation of lead solder and/or lead-containing fixtures at the kitchen faucet as described in Paragraph III.E.1.c.iv. above, up to the cost of \$3,500.00 per Remediation-Eligible Residence.

2. ***Beneficial Project Contingent Contributions.***

- a. To the extent that at least \$3,000.00 of the available \$900,000.00 remains after the completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above), up to the sum of \$3,500.00 per Remediation-Eligible Residence, Defendant shall, within ten (10) days after obtaining any necessary approvals from Plaintiff, make the following beneficial project contributions:
  - i. Fifty Thousand Dollars (\$50,000.00) to the Crete-Monee School District 201-U earmarked for lead in drinking water sampling, remediation and/or other related work at the Crete-Monee Middle School and Coretta Scott King Magnet School; *provided however*, that if less than \$55,000.00 remains, the amount of the contribution shall be ninety percent (90%) of the available monies as jointly determined by Plaintiff and Defendant in writing. The payment shall

be paid by certified check or money order made payable to the Crete-Monee School District 201-U and shall be sent by overnight mail to:

Crete-Monee School District 201-U  
c/o Dr. Kara Coglianese, Superintendent  
690 W. Exchange Street  
Crete, IL 60417

- ii. Five Thousand Dollars (\$5,000.00) to PK's Christian Learning Site earmarked for lead in drinking water sampling, remediation and/or other related work; *provided however*, that if less than \$55,000.00 remains, the amount of the contribution shall be ten percent (10%) of the available monies as jointly determined by Plaintiff and Defendant. The payment shall be paid by certified check or money order made payable to PK's Christian Learning Site and shall be sent by overnight mail to:

PK's Christian Learning Site  
c/o Priscilla Dede Baffour, President and  
Registered Agent  
82 Town Center  
University Park, IL 60484

- iii. A copy of each of the checks and the transmittal letters shall be sent to:

Kathryn A. Pamerter  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602; and

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432

- b. To the extent that less than \$3,000.00 of the available \$900,000.00 remains after the completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above), up to the sum of \$3,500.00 per Remediation-Eligible Residence, Defendant shall pay the remaining monies to the EPTF and the County of Will in accordance with Section III.A. above within ten (10) days of the completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above and up to the sum of \$3,500.00 per Remediation-Eligible Residence).

3. ***Beneficial Project Certification.*** By its signature on this Consent Order, Defendant certifies that, as of the date of the entry of this Consent Order, it is not required to perform or develop the foregoing beneficial project by any federal, state or local law or regulation, nor is it required to perform or develop the foregoing beneficial project by agreement or injunctive relief in any other case. Defendant further certifies that it has not received, and is not presently negotiating to receive credit for, the foregoing beneficial project in any other enforcement action.

4. ***Beneficial Project Statement Requirement.*** Any public statement, oral or written, in print, film or other media, made by Defendant making reference to the foregoing beneficial project shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General, Illinois EPA and Will County State’s

Attorney's Office in the matter of *People of the State of Illinois, ex rel. Kwame Raoul, Attorney General of the State of Illinois and ex. rel. James W. Glasgow, State's Attorney for Will County, Illinois, v. Aqua Illinois, Inc.* (Case No.19CH1208).”

**F. Force Majeure.**

1. *Force majeure* is an event arising solely beyond the control of Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, Defendant shall orally notify Illinois EPA (David Cook at (217) 782-0078) within forty-eight (48) hours of the occurrence. Written notice shall be given to Plaintiff's representatives as listed in Section III.I. of this Consent Order as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, Plaintiff shall respond in writing regarding Defendant's claim of a delay or impediment to performance. If Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of reasonable due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a

modification to this Consent Order. Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If Plaintiff does not accept Defendant's claim of a *force majeure* event, Defendant must file a petition with the Court within twenty (20) calendar days of receipt of Plaintiff's determination in order to contest the imposition of stipulated penalties. Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of reasonable due diligence, Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

**G. Enforcement and Modification of Consent Order.**

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the representatives designated in Section III.I. of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any

such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

**H. Dispute Resolution.**

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or Plaintiff's rejection of a request for modification or termination of the Consent Order. Plaintiff reserves the right to seek enforcement by the Court where Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or

modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, Plaintiff shall provide Defendant with a written summary of its position regarding the dispute. The position advanced by Plaintiff shall be considered binding unless, within twenty (20) calendar days of Defendant's receipt of the written summary of Plaintiff's position, Defendant files a petition with this Court seeking judicial resolution of the dispute. Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, Plaintiff's written summary of its position, Defendant's petition before the Court and Plaintiff's response to the petition. Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

**I. Notice and Submittals.**

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to Plaintiff

Kathryn A. Pamenter  
Senior Assistant Attorney General  
Stephen J. Sylvester  
Bureau Chief  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
Kathryn.Pamenter@ilag.gov  
Stephen.Sylvester@ilag.gov  
(via Email Only)

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432  
mtatroe@willcountyillinois.com  
(via email only)

Michael Roubitchek  
Deputy General Counsel, Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
Mike.Roubitchek@illinois.gov  
(via email only)

Jenny Larsen, P.E.  
Supervisor, Permit Section  
Division of Public Water Supplies  
Illinois Environmental Protection Agency  
9511 Harrison Street  
Des Plaines, IL 60016  
[Jenny.Larsen@Illinois.gov](mailto:Jenny.Larsen@Illinois.gov)  
(via email only)

FOR DEFENDANT  
Aqua Illinois, Inc.  
Attn: Mr. David Carter, President  
1000 S. Schuyler Avenue  
Kankakee, IL 60901  
[DCCarter@aquaamerica.com](mailto:DCCarter@aquaamerica.com)  
(via email only)

Daniel J. Deeb  
ARENTFOX SCHIFF LLP  
233 South Wacker Drive, Suite 7100  
Chicago, IL 60606  
[Dan.Deeb@afslaw.com](mailto:Dan.Deeb@afslaw.com)  
(via email only)

**J. Release from Liability.**

In consideration of Defendant's payment of up to \$200,000.00 in accordance with Paragraph III.A.1., its undertaking of the beneficial project as contained in Section III.E., its

commitment to cease and desist as contained in Paragraph III.D.13. above, and completion of all activities required hereunder, Plaintiff releases, waives and discharges Defendant from any further liability or penalties for the alleged violations of the Act and Board regulations and common law public nuisance that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on August 16, 2019. Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than Defendant.

**K. Termination.**

1. Defendant may request that this Consent Order terminate no sooner than eighteen (18) months after Defendant has completed all actions required of Defendant in the Consent Order, *provided that* Defendant has been in continuous compliance with the terms of the Consent Order for the eighteen (18) months preceding the request. Any such request must be made by notice to Plaintiff and include a statement that Defendant has completed all actions required by this Consent Order and has been in continuous compliance with the terms of the Consent Order for the eighteen

(18) months preceding the request and the following certification by a responsible corporate official of Defendant:

I certify under penalty of law that this statement was prepared under my direction or supervision, and that the information submitted in or accompanying this statement of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment for knowing violations.

2. Plaintiff shall notify Defendant of its decision on the request within forty-five (45) calendar days of Plaintiff's receipt of the request. If Plaintiff agrees to terminate this Consent Order, Plaintiff and Defendant shall jointly file a notice with the Court that the Consent Order is terminated. If Plaintiff does not agree to terminate this Consent Order, Plaintiff shall provide Defendant written notification stating the reasons why this Consent Order should not be terminated and Defendant may then invoke the Dispute Resolution provisions. The Consent Order shall remain in effect pending resolution of any dispute by the parties or the Court concerning whether Defendant has completed its obligations under this Consent Order and is in compliance with the terms of the Consent Order. The provisions of Paragraph III.D.13. (Cease and Desist) and Section III.J (Release from Liability) of this Consent Order shall survive and shall not be subject to and are not affected by the termination of any other provision of this Consent Order.

**L. Execution and Entry of Consent Order.**

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

*[Remainder of Page Blank; Text Continues on Page 42]*

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

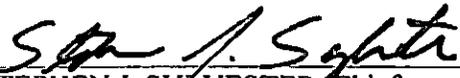
FOR PLAINTIFF:

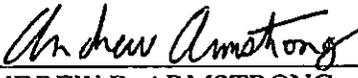
PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
STEPHEN J. SYLVESTER, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
ANDREW B. ARMSTRONG  
Chief Legal Counsel

DATE: 7/3/24

DATE: 07/03/2024

*ex rel.* JAMES W. GLASGOW  
State's Attorney for Will County

BY: \_\_\_\_\_  
MARY M. TATROE  
Civil Division Chief  
Office of the Will County State's Attorney

DATE: \_\_\_\_\_

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
STEPHEN J. SYLVESTER, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
ANDREW B. ARMSTRONG  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

*ex rel.* JAMES W. GLASGOW  
State's Attorney for Will County

BY: Mary M. Tatroe  
MARY M. TATROE  
Civil Division Chief  
Office of the Will County State's Attorney

DATE: July 2, 2024

*Signature Page to Consent Order in People of the State of Illinois v. Aqua Illinois, Inc. (Case No. 19CH1208).*

FOR DEFENDANT:

AQUA ILLINOIS, INC.

BY:   
Its: President

DATE: July 2, 2024

ENTERED:

  
JUDGE

DATE: 7/10/24

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**CONSENT ORDER**

GROUP EXHIBIT A

**IMPORTANT NOTICE REGARDING BOTTLED WATER, FILTER DEVICES, AND  
TECHNICAL ASSISTANCE PROGRAM**

**TO: CUSTOMERS OF AQUA ILLINOIS, INC.'S PUBLIC WATER SYSTEM THAT RESIDE IN THE CUSTOMER RESOURCES AREA, PREVIOUSLY KNOWN AS THE LEAD ADVISORY AREA.**

As you may recall, on approximately July 29, 2019, Aqua Illinois, Inc. ("Aqua") issued a "lead advisory" to certain customers of Aqua's public water system having the assigned Public Water System Identification No. IL1975030 ("Public Water System"), which is located inside and outside the Village of University Park in Will and Cook Counties, Illinois. That area, previously referred to as the "lead advisory area," is now the "Customer Resources Area."

On \_\_\_\_\_, 2024, the Will County Circuit Court entered a Consent Order in *People of the State of Illinois v. Aqua Illinois, Inc.*, Case No. 19CH1208 (the "Consent Order"), which sets forth certain requirements for Aqua customers located in the Customer Resources Area. Aqua is a party to the Consent Order. A copy of the Consent Order and additional information relating to this Notice may be found on Aqua's website, [WaterFactsIL.com](http://WaterFactsIL.com).

This Notice is provided for the following five purposes:

**First**, this Notice advises that drinking water from Aqua's Public Water System has met the lead in drinking water compliance standard for more than two full years. The prior Agreed Interim Order required Aqua to continue providing bottled water and filter devices during this period while the Illinois Environmental Protection Agency ("Illinois EPA") evaluated the effectiveness of the corrosion control treatment under varying source water conditions.

**Second**, in accordance with the Consent Order, this Notice advises customers in the Customer Resources Area that Aqua will cease to provide free bottled water to such customers as of *[insert date 30 days after consent order entry]*.

**Third**, in accordance with the Consent Order, this Notice advises customers in the Customer Resources Area that Aqua will cease to provide free filter devices to such customers as of *[insert date 60 days after consent order entry]*.

**Fourth**, if you are a residential customer, your house, condominium unit, or apartment unit (the "House") has been identified as one which may be eligible to

participate in the "Technical Assistance Program" under the Consent Order because it is located in the Customer Resources Area. Both Aqua and Illinois EPA recommend that you participate in the program. **Please read the following materials carefully.**

**A. What Activities are Included in the Technical Assistance Program?**

As more fully described in the Consent Order, each House that participates in the Technical Assistance Program will be eligible to receive the following services, free of charge:

- Collection of an initial tap water sample for lead from your kitchen cold water faucet.
- If the result of the initial tap water test is above 15 parts per billion (ppb) for lead, you will be eligible to receive free filter devices, and then an inspection of the visible plumbing for your kitchen faucet, completion of initial corrective actions, and then the collection of an additional tap water sample for lead from your kitchen cold water faucet.
- If the additional tap water test is also above 15 parts per billion (ppb) for lead, you will continue to be eligible to receive free filter devices, and Aqua will connect you with an Illinois-licensed third-party plumber who will further inspect and remediate lead solder and/or lead-containing fixtures at the kitchen faucet, which work would be paid directly by Aqua up to a cost of \$3,500.00.

After a minimum of 75 days from the completion of the kitchen faucet remediation work, you may contact Aqua to collect another kitchen tap cold water sample for lead. If that sample is above 15 parts per billion (ppb) for lead, you would receive free filter devices for that faucet from Aqua until your respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event.

**B. What is the deadline for Customers in the Customer Resources Area to sign-up for the Technical Assistance Program?**

The deadline to sign-up for the Technical Assistance Program is:  
\_\_\_\_\_ *[insert date 240 days from consent order entry].*

**C. How do you, as a Customer in the Customer Resources Area, sign-up for the Technical Assistance Program?**

If you wish to participate in the Technical Assistance Program, please complete all portions of the Participation Agreement attached as Exhibit 1 and return a copy to Aqua in person or by U.S. mail at *[insert Aqua-dedicated Customer Resources Area ("CRA") mailing address]* or via email at *[insert Aqua-dedicated CRA email address]*, no later than \_\_\_\_\_ *[insert date 240 days from consent order entry]*. You are encouraged (a) to return your completed Participation Agreement via certified mail, such that there is proof of mailing/delivery, if you elect that method of delivery, and (b) to keep a copy of your completed Participation Agreement for your records.

Importantly, the Technical Assistance Program is limited to a maximum of \$900,000.00 worth of kitchen faucet remediation work for all eligible customers. You are thus encouraged to sign up for the Technical Assistance Program as soon as you can.

**D. Are you, as a Customer in the Customer Resources Area, required to participate in the Technical Assistance Program?**

No. Your choice to participate or not participate in the Technical Assistance Program is strictly voluntary; no customer will be forced to participate. Nothing in this Notice or the Participation Agreement shall be deemed to waive, discharge, release or otherwise impact any private causes of action or rights that may exist against Aqua, and Aqua reserves all rights and defenses regarding any such private causes of action or rights.

**E. How do you get more information?** Further details are provided within the Consent Order. A copy of the Consent Order is available at *[add link]*. If you have questions, you also may call *[insert dedicated Aqua phone number]*. If you should get a voicemail message, please leave your name, telephone number, time of your call, and telephone number at which you can be reached. Subject to exceptional circumstances, your call should be returned within two (2) business days.

**Fifth**, if you are not interested in participating in the Technical Assistance Program but would like your water sampled for lead, without any charge, you may

contact Aqua at [*insert dedicated Aqua CRA phone number*] once per month prior to [*insert 180<sup>th</sup> day*]. Please follow the sampling instructions to ensure a timely and accurate sampling result.

Exhibit 1

**PARTICIPATION AGREEMENT**

*Please fill out this form completely – all information is needed.*

*Where applicable, both the owner(s) and the tenant(s) must complete this form.*

- Full street address of the house, apartment unit or condominium unit: \_\_\_\_\_ (the “House”)
- Full legal names of all owners of the House: \_\_\_\_\_ (collectively, the “Owners”) (*print name of each owner of the house*)
- The House [is/is not] (*circle one*) a rental property. If the House is a rental property, the tenants of the House consist of the following people: \_\_\_\_\_ (collectively, the “Tenants”) (*print name of each tenant of the House*)
- House Contact Information: \_\_\_\_\_ (*print the telephone and/or email address for the individual you wish Aqua to contact regarding this Participation Agreement*)

The Owners, and if the House is a rental property, the Tenants, each agree as follows:

1. We/I have read and understand the IMPORTANT NOTICE REGARDING BOTTLED WATER, FILTER DEVICES, AND TECHICAL ASSISTANCE PROGRAM mailed to us/me, and which is also available at [*insert link to WaterFacts site page*].
2. We/I wish for the House to be included in the Technical Assistance Program, as established under the Consent Order.
3. We/I will (a) allow Aqua or its assignee entry and reasonable access to the House during normal business days, Monday through Friday, excluding national and state holidays, at mutually acceptable times, for all sampling, inspection and repair work contemplated by the Consent Order, and (b) collect tap samples from the House’s kitchen faucet in accordance with the written sampling procedures provided by Aqua. This is referred to as “Customer Cooperation” under the Consent Order. We/I agree that Aqua may use the contact telephone number or email address stated above as the exclusive means to arrange for access to the House. Prior to any sampling in the House conducted by Aqua, we/I will ensure that the kitchen tap is not used for at least 6 hours and that cold water was last used at the kitchen tap.
4. If the House has a treatment or filtration system for the kitchen faucet that may be bypassed, we/I agree to follow instructions provided by Aqua to bypass that system.
5. We/I acknowledge that the Illinois-licensed third-party plumber contemplated by the Consent Order would be chosen and paid directly by Aqua up to \$3,500.00. We/I also acknowledge that we/I fully release Aqua from any responsibility or liability relating to any work that such plumber performs in the House pursuant to

the requirements of the Consent Order. We/I further also agree that (a) any claims we/I may come to have relating to such plumber's access or work will be limited to the terms of the warranty provided by such plumber, and (b) the terms of this Section 5 shall survive any termination of this Participation Agreement.

6. We/I may withdraw from the Technical Assistance Program at any time by sending a letter to Aqua at [*insert dedicated CRA mailing address*] or an email to Aqua at [*insert dedicated CRA email address*] asking to terminate this agreement.
7. We/I have had the opportunity to consult with legal counsel prior to signing below.
8. We/I will advise Aqua in writing at [*insert dedicated CRA mailing address and email*] of any change in ownership of the House, and if the House is rented, of any change in the tenants of the House, at least fifteen (15) days before such change. All services for the House under the Technical Assistance Program will be temporarily suspended immediately upon the change in ownership or tenancy. The temporary suspension will become permanent, such that the House shall no longer be eligible for services under the Technical Assistance Program, unless a replacement Participation Agreement signed by all remaining and new owners (and, if applicable, all remaining and new tenants) is provided to Aqua within fifteen (15) days of the change in ownership or tenancy.
9. We/I acknowledge that compliance with all of the terms of this Participation Agreement is a requisite for participation in the Technical Assistance Program and that the free services of the program will cease to be provided to the House if we/I do not comply with these terms.

**Owner Signatures.** By executing immediately below, the undersigned certify under penalty of perjury as provided for by 28 U.S.C. § 1746, that he/she/it/they is/are the owner(s) of the House and that there is/are no other owner(s) of the House.

\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

**Tenant Signatures.** By executing this form below, the undersigned certify under penalty of perjury as provided for by 28 U.S.C. § 1746, that he/she/it/they is/are the tenant(s) of the House and that there is/are no other tenant(s) of the House.

\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

Once fully completed, this Participation Agreement should be sent to Aqua at the below address:

*[Insert dedicated CRA mailing address]*

Certified mailing is recommended but not required.

*[Insert dedicated CRA email address]*

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**CONSENT ORDER**

EXHIBIT B

(Mailing)

**TO: CUSTOMERS OF AQUA ILLINOIS, INC.'S PUBLIC WATER SYSTEM OUTSIDE OF THE CUSTOMER RESOURCES AREA**

If you would like your water sampled for lead, without any charge, you may contact Aqua at [*insert non-Customer Resources Area phone number*] once per month prior to [*insert 180<sup>th</sup> day*]. A copy of the sampling results will be mailed to you. Please follow the sampling instructions to ensure a timely and accurate sampling result.

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS	)	
<i>ex rel.</i> KWAME RAOUL, Attorney	)	
General of the State of Illinois, and <i>ex rel.</i>	)	
JAMES W. GLASGOW, State's Attorney	)	
for Will County, Illinois,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 CH 1208
	)	
AQUA ILLINOIS, INC., an Illinois	)	
domestic corporation,	)	
	)	
Defendant.	)	

**CONSENT ORDER**

EXHIBIT C

Premise	Customer Name	Customer Contact Information			Purpose of Contact (compliance sampling, power sampling, inspection, TAP pre- inspection, TAP post- inspection sampling)	Date of 1st Contact Attempt	Means of 1st Contact Attempt* (Phone/fax/letter)	Result of 1st Contact Attempt (E.g., no response, refusal, asked for more information)	Date of 2nd Contact Attempt (at least 10 days after 1st contact)	Means of 2nd Contact Attempt* (Phone/fax/letter)	Result of 2nd Contact Attempt (E.g., no response, refusal, asked for more information)	Date of 3rd Contact Attempt (at least 10 days after 2nd contact)	Means of 3rd Contact Attempt* (Phone/fax/letter)	Result of 3rd Contact Attempt (E.g., no response, refusal, asked for more information)
		Telephone	Email	Address										

\* At least 1 of the 3 contact attempts must be a letter or email. If the customer provides a letter or email declining cooperation, no further contact attempts are necessary.

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS	)	
<i>ex rel.</i> KWAME RAOUL, Attorney	)	
General of the State of Illinois, and <i>ex rel.</i>	)	
JAMES W. GLASGOW, State's Attorney	)	
for Will County, Illinois,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 CH 1208
	)	
AQUA ILLINOIS, INC., an Illinois	)	
domestic corporation,	)	
	)	
Defendant.	)	

**CONSENT ORDER**

EXHIBIT D

**Technical Assistance Program  
Remediation-Eligible Residence Fact Sheet  
Regarding  
Kitchen Faucet Plumbing Remediation Work**

Thank you for participating in the Technical Assistance Program. Based on the kitchen tap water sampling conducted at your house, condominium unit, or apartment unit ("House") under that program, the kitchen faucet of your House is eligible for certain plumbing remediation work which will be paid by Aqua directly up to a cost of \$3,500.00. A description of the possible kitchen faucet plumbing work and instructions on how to arrange for that work are provided below.

1. ***What kitchen faucet plumbing work will be done?*** An Illinois-licensed third-party plumber will inspect the plumbing of your kitchen faucet for lead-containing plumbing. Such plumber will then remediate exposed lead-containing plumbing, namely lead solder and/or lead-containing fixtures at the kitchen faucet, with lead-free materials. Such plumber will not remove and replace any drywall, plaster, wall, flooring, ceiling or cabinetry, but instead will inspect and replace readily visible lead-containing kitchen faucet plumbing.
2. ***Who will do the plumbing work?*** The kitchen faucet plumbing work will be done by [Plumber]. [Plumber] is an Illinois-licensed third-party plumber.
3. ***How will this plumbing work be paid for?*** [Plumber] will bill Aqua directly up to a cost of \$3,500.00. For your records, [Plumber] will leave a copy of the invoice at your House following completion of the work. To the extent that [Plumber] arrives at your House at the scheduled date/time to conduct the kitchen faucet plumbing work and [Plumber] cannot then access your House, the minimum no-show charge (equivalent to two hours of work) will be assessed against the available \$3,500.00 amount for kitchen faucet plumbing work at your House.
4. ***How do I schedule the plumbing work for my House?*** Please call [Plumber] at [phone] to schedule the kitchen faucet plumbing work for your House. Because the funding of the Technical Assistance Program is limited, you are encouraged to call [Plumber] as soon as possible. If you have any difficulty reaching [Plumber], please call Aqua at [phone]. If you have not scheduled the appointment with [Plumber], or if Aqua does not hear from you, by \_\_\_\_\_ (which is sixty (60) days after the date of this Fact Sheet set forth below), your House will no longer be eligible for kitchen faucet plumbing remediation work under the Technical Assistance Program.

**5. What should I do after the plumbing work is completed?** After the kitchen faucet plumbing work is completed, you may contact Aqua at *[insert dedicated CRA phone number]* to request sampling of your House's kitchen cold water tap. Aqua will then arrange for sampling of your House's kitchen cold water tap to occur promptly, but no earlier than seventy-five (75) days after completion of the kitchen faucet plumbing work. If that sample is above 15 parts per billion (ppb) for lead, you would receive free filter devices for that faucet from Aqua until your sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event.

If you have any questions, please call *[insert dedicated CRA phone number]*.

Dated: \_\_\_\_\_

**EXHIBIT G**

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> KWAME RAOUL, Attorney General	)	
of the State of Illinois, and	)	
<i>ex rel.</i> JAMES W. GLASGOW,	)	
State’s Attorney for Will County, Illinois,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19CH1208
	)	
AQUA ILLINOIS, INC., an Illinois corporation,	)	
	)	
Defendant.	)	

**PLAINTIFF’S MOTION FOR APPROVAL AND ENTRY OF CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* JAMES W. GLASGOW, State’s Attorney for Will County, Illinois (collectively, “People”), respectfully requests that this Court approve and enter the proposed Consent Order attached hereto as Exhibit 1 (the “Consent Order”) and the accompanying proposed Agreed Order attached hereto as Exhibit 2 (the “Agreed Order”), which would resolve the above-referenced case. In support hereof, the People state as follows:

**BACKGROUND**

Aqua Illinois, Inc. (“Defendant”) owns and operates the public water system having the assigned Public Water System Identification No. IL1975030 (the “Public Water System”), which is located inside and outside the Village of University Park in Will and Cook Counties, Illinois (the “Village”). (Consent Order at ¶ I.A.4.) On March 27, 2013, Defendant filed a Verified Petition with the Illinois Commerce Commission (“ICC”) seeking the ICC’s permission to switch the source of the drinking water for the Public Water System from local groundwater wells to water

drawn from the Kankakee River. (See Complaint for Injunctive Relief and Civil Penalties filed on August 16, 2019 (“Complaint”) and Answer and Affirmative Defenses to Complaint for Injunctive Relief and Civil Penalties filed on December 2, 2019 (“Answer”) at Count I, ¶ 7.) On July 30, 2014, the ICC issued its final order approving Defendant’s request. (Complaint and Answer at Count I, ¶ 8.) Thereafter, the Illinois Environmental Protection Agency (“Illinois EPA”) has had regulatory oversight for drinking water quality pursuant to the “Lead and Copper Rule”, 35 Ill. Adm. Code Part 611, Subpart G (the “Lead and Copper Rule”).

Following such source water change, Defendant was required to utilize a corrosion control treatment in its Public Water System to “minimize[] the lead and copper concentrations at users’ taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.” 35 Ill. Adm. Code 611.350(b) (definition of optimal corrosion control treatment). In December 2017, Defendant began using a blended phosphate mix, comprised primarily of polyphosphate, as the corrosion control treatment in its Public Water System. (Complaint and Answer at Count I, ¶ 16.) In 2019, Defendant’s regulatory compliance sampling of the drinking water in its Public Water System showed lead levels ranging from less than 1.0 micrograms per liter (“ug/l”) to 1700 ug/l.<sup>1</sup> (Complaint and Answer at Count I, ¶ 29.) As a result, Defendant exceeded the regulatory “90th percentile” “action level” for lead of 15 ug/l for the six-month compliance sampling period of January 1 – June 30, 2019. (35 Ill. Adm. Code 611.350(b) (definitions of “action level”, “90th percentile level”, “meet”, and “exceed”); 35 Ill. Adm. Code

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<sup>1</sup> Section 611.350(b) defines the term “action level” as “that concentration of lead or copper in water computed under subsection (c) that determines, in some cases, the treatment requirements of this Subpart G that a supplier must complete. The action level for lead is 0.015 mg/[liter]. The action level for copper is 1.3 mg/[liter].” 35 Ill. Adm. Code 611.350(b). mg/l or parts per million (“ppm”) refers to milligrams per liter, while ug/l or parts per billion (“ppb”) refers to micrograms per liter. As such, 0.015 mg/l (ppm) is equivalent to 15 ug/l (ppb).

611.350(c)(1); 35 Ill. Adm. Code 611.350(c)(3).)

On June 14, 2019, due to the elevated lead levels, Defendant, on its own, issued a “do not consume” notice, instructing recipients not to consume water from the tap until the notice was lifted. (Complaint and Answer at Count I, ¶ 30.) In addition, beginning on or about June 14, 2019, Defendant began testing water for lead on a weekly basis from approximately 42 separate residential locations within the Village, and then beginning in mid-July 2019, Defendant increased the number of its sampling locations in the Village to more than 70 homes. (Complaint and Answer at Count I, ¶ 32.) Sample results continued to show the presence of lead exceeding 15 ug/l, with lead levels being detected as high as 3900 ug/l. (*Id.*) On or about June 15, 2019, Defendant changed its corrosion control treatment by adding a new blended phosphate, comprised primarily of orthophosphate, through Defendant’s Public Water System. (Complaint and Answer at Count I, ¶ 31.) On or about July 29, 2019, Defendant replaced the “do not consume” notice with a lead advisory. (Agreed Interim Order, described *infra*, at ¶ II.A.1.)

On August 16, 2019, the Complaint was filed in this Court on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of Illinois EPA, and James W. Glasgow, State’s Attorney for Will County, on his own motion, pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(d) and (e) (2018), against Defendant. The Complaint alleges that Defendant failed to provide “continuous operation and maintenance of [Defendant’s Public Water System] so that the water shall be assuredly safe in quality. . . .”, Complaint at Count I, Section E (quoting 35 Ill. Adm. Code 601.101(a)), and thereby also violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018).<sup>2</sup>

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<sup>2</sup> The Complaint alleges the following additional violations: (i) Violation of Drinking Water Monitoring

Thereafter, Defendant exceeded the lead action level for the six-month compliance sampling periods of July 1–December 31, 2019 and January 1–June 30, 2020 for its Public Water System. (Tr. at p. 38, lines 16–24; p. 40, lines 4–7.)<sup>3</sup> In April 2020, Defendant changed its corrosion control treatment for its Public Water System to a phosphoric acid corrosion control chemical. (Consent Order at ¶ I.E.7.)<sup>4</sup> Following such corrosion control treatment change, Defendant did not have a lead action level exceedance for the six-month compliance sampling period of July 1–December 31, 2020. (Tr. at p. 40, lines 8-11.) However, in March 2021, Defendant’s monthly compliance sampling results showed an upward trend in lead levels, Tr. at p. 40, lines 22-24, and Defendant had a lead action level exceedance for the six-month compliance sampling period of January 1– June 30, 2021, Tr. at p. 41, lines 1–4.

In July 2021, Defendant sought and obtained Illinois EPA’s approval to change the corrosion control treatment for its Public Water System to zinc orthophosphate. (Consent Order at ¶ I.E.8.)<sup>5</sup> After implementing the corrosion control treatment of zinc orthophosphate into its Public

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Site Plan and Sampling Requirements pursuant to 415 ILCS 5/18(a)(2) and 19 (2018) and 35 Ill. Adm. Code 611.356(a) and (c); (ii) Violation of Construction Permit Requirements pursuant to 415 ILCS 5/15(a), 18(a)(2) and 18(a)(3) (2018) and 35 Ill. Adm. Code 602.101, 602.116, and 602.200; (iii) Operating Permit Violations pursuant to 415 ILCS 5/18(a)(2) and (3) (2018) and 35 Ill. Adm. Code 602.101 and 602.300; and (iv) Common Law Public Nuisance.

<sup>3</sup> Pursuant to Ill. R. Evid. 201, the Court may take judicial notice of adjudicative facts. Citations herein to the September 28, 2022 Hearing Transcript (“Tr.”) correspond to the permit appeal entitled *Aqua Illinois, Inc. v. IEPA* (PCB2023-012) that Defendant filed with the Illinois Pollution Control Board (“Board”) on July 8, 2022. The docket for PCB2023-12 may be found at: <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17206>.

<sup>4</sup> On April 17, 2020, Illinois EPA issued to Defendant “Public Water Supply Construction Permit No. 1020-FY2020” for a phosphoric acid chemical treatment system. (Consent Order at ¶ I.E.7.) On April 17, 2020, Illinois EPA issued to Defendant “Operating Permit No. 1020-FY2020” for the phosphoric acid chemical treatment system. (*Id.*) After April 17, 2020, Defendant implemented the April 2020 Construction Permit and the April 2020 Operating Permit. (*Id.*)

<sup>5</sup> On July 30, 2021, Illinois EPA issued to Defendant “Public Water Supply Construction Permit No. 0071-FY2022” to switch to a zinc orthophosphate corrosion control chemical in the Public Water System. (Consent Order at ¶ I.E.8.) On August 3, 2021, Illinois EPA issued to Defendant “Operating Permit 0071-

Water System, Defendant did not have a lead action level exceedance for the three following six-month compliance sampling periods of July 1–December 31, 2021, January 1–June 30, 2022, and June 1–December 31, 2022. (Consent Order at ¶¶ I.E.9., I.E.12., and I.E.16.) During this time, Illinois EPA continued to evaluate the effectiveness of the corrosion control treatment under varying source water conditions. (*Id.* at Group Exhibit A, p. 1.) On June 14, 2023, Illinois EPA issued a Special Exception Permit to Defendant, that, among other things, approved annual compliance sampling of the Public Water System. (*Id.* at ¶ I.E.17.) With Illinois EPA’s issuance of the June 14, 2023 Special Exception Permit, the compliance sampling period changed to January 1 – September 30, 2023. (*Id.* at ¶ I.E.18.) Each of the compliance sampling results for the Public Water System that Defendant submitted to the Safe Drinking Water Information System (SDWIS) for the period January 1 – September 30, 2023 have been below 15 ppb. (*Id.*)

**AGREED INTERIM ORDER, DEFENDANT’S ANSWER, AND DISCOVERY**

On November 1, 2019, this Court entered the Agreed Interim Order. Pursuant to such Order, Defendant, among other things:

- a. provided alternative sources of drinking water comprising bottled water, faucet filter devices certified by NSF/ANSI Standards 42 and 53, and/or pitcher filters certified by NSF/ANSI Standards 42 and 53, as well as replacement filter cartridges for both filter devices, free of charge to customers of the Public Water System included within the area of Defendant’s issued “lead advisory” (as that term was described in Paragraphs II.A.1. and II.B. of the Agreed Interim Order, the “Lead Advisory Area” which,

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FY2022” to switch to a zinc orthophosphate corrosion control chemical in the Public Water System. (*Id.*) After July 30, 2021 and August 3, 2021, Defendant implemented the July 2021 Construction Permit and August 2021 Operating Permit, respectively. (*Id.*) Thereafter, on August 8, 2022, Illinois EPA issued a Special Exception Permit to Defendant that approved Defendant’s optimal corrosion control treatment recommendation, namely zinc orthophosphate. (*Id.* at ¶ I.E.13.)

if the Consent Order is entered, will be referred to as the “Customer Resources Area”) (Agreed Interim Order at ¶ II.A.; Consent Order at ¶¶ I.E.3., III.D.2.; *see also id.* at ¶ I.F.);

b. collected compliance samples in its Public Water System beyond the requisite number set forth in the Lead and Copper Rule (Agreed Interim Order at ¶ II.F; Consent Order at ¶ I.E.4.);

c. submitted on November 30, 2019, a report to Plaintiff and Illinois EPA presenting the performed comprehensive corrosion control studies and the then-resulting optimal corrosion control treatment recommendation for Illinois EPA’s review and approval, which recommendation Defendant revised on August 4, 2020 (Agreed Interim Order at ¶ II.C.; Consent Order at ¶ I.E.6);

d. submitted on February 17, 2022, an optimal corrosion control treatment recommendation to Illinois EPA, revising its August 4, 2020 recommendation and identifying zinc orthophosphate as the optimal treatment, which Illinois EPA approved through the August 8, 2022 Special Exception Permit that Illinois EPA issued to Defendant for its Public Water System (Agreed Interim Order at ¶ II.C.; Consent Order at ¶¶ I.E.10, I.E.13); and

e. participated in meetings of the “Response Team” (as that term was defined in the Agreed Interim Order), conducted customer-requested tap water sampling, offered customer-requested blood lead level testing through December 31, 2019, and maintained a dedicated website (Agreed Interim Order at ¶¶ II.D., II.G., II.I., II.J.; Consent Order at ¶ I.E.5.)

After entry of the Agreed Interim Order, on December 2, 2019, Defendant filed the Answer, in which it, among other things, denied the allegations set forth in the Complaint. Similarly,

Defendant has denied the allegations of the Complaint through the Agreed Interim Order and the Consent Order.

Since Defendant's filing of the Answer, the parties have engaged in discovery and motion practice in accordance with several Court orders, including issuing and responding to written discovery requests. To the extent that the Court enters the Consent Order, as described more fully below, the People seek the entry of the accompanying Agreed Order which would strike all remaining dates in the case.

**TERMS OF THE CONSENT ORDER**

The Consent Order includes relief that addresses each of the alleged violations in the Complaint and is beyond the regulatory requirements. Among its provisions, the Consent Order specifies:

- a. parameters for Defendant's compliance sampling in addition to those set forth in the Lead and Copper Rule (Paragraph III.D.1.);
- b. a process for Defendant's discontinuation of its provision of bottled water and filter devices, due to Defendant having met the lead action level for several six-month compliance sampling periods and obtained Illinois EPA's prior approval of the optimal corrosion control treatment for the Public Water System (*supra* p. 5.), while ensuring that customers within the Customer Resources Area have access to bottled water and filter devices should a designated sampling result exceed 100 ppb or 15 ppb, respectively, prior to the Consent Order's termination in accordance with Section III.K. therein (Paragraphs III.D.3. and 4.);
- c. the continuation of customer-requested sampling for an additional 180 days, whereby any customer of the Public Water System may request monthly sampling of that

customer's kitchen cold water tap for the presence of lead, without charge to the customer (Paragraph III.D.5.);

d. the requirements for Defendant conducting nitrate variability testing (Paragraph III.D.6.); and

e. that Defendant maintain its website, WaterFactsIL.com, for a specified period (Paragraph III.D.7.).

In addition, the parties have negotiated and agreed upon a beneficial project in this case (Section III.E.). As more specifically set forth in the Consent Order and Exhibits thereto, under the so-called "Technical Assistance Program", residential customers in the Customer Resources Area that elect to participate in the program prior to a sign-up deadline are eligible to receive the following services, free of charge:

i. Collection of an initial tap water sample for lead from such customer's kitchen cold water faucet;

ii. If the result of the initial tap water test is above 15 ppb for lead, such customer will be eligible to receive free filter devices, and then an inspection of the visible plumbing for such customer's kitchen faucet, completion of initial corrective actions, and then the collection of an additional tap water sample for lead from such customer's kitchen cold water faucet; and

iii. If the additional tap water test is also above 15 ppb for lead, such customer will continue to be eligible to receive free filter devices, and Defendant will connect such customer with an Illinois-licensed third-party plumber who will further inspect and remediate lead solder and/or lead-containing fixtures at such customer's kitchen faucet, which work would be paid directly by Defendant up to a cost of \$2,000.00. After a

minimum of 75 days from the completion of such kitchen faucet plumbing remediation work, such customer may contact Defendant to collect another kitchen tap cold water sample for lead. If that sample is above 15 ppb for lead, such customer would receive free filters for that faucet from Defendant until the respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event. (Consent Order at Group Exhibit A thereto; *see also id.* at ¶ III.E. and Exhibit D thereto.)

The Technical Assistance Program continues for one year after the date of the entry of the Consent Order; provided that, to the extent monies remain available, Defendant would be required to continue to completion all technical assistance, including remediation of lead solder and/or lead-containing fixtures at the kitchen faucet, at each house, condominium unit, and apartment unit still in-progress as of such one-year date.

To effectuate the Technical Assistance Program, Defendant will fund an escrow account with up to \$300,000.00 for the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet, and Plaintiff has agreed to make Defendant's separate \$200,000.00 payment under the Consent Order available for such work, if needed. (*Id.* at ¶¶ III.A., III.E.1.) To the extent sufficient funds remain after the Technical Assistance Program kitchen faucet plumbing remediation work has been completed, the Consent Order also provides for contributions for lead in drinking water sampling, remediation and/or other related work to Crete-Monee School District 201-U (for the benefit of Crete-Monee Middle School and Coretta Scott King Magnet School) and to PK's Christian Learning Site, which were selected due to their location in the Customer Resources Area. (*Id.* at ¶¶ III.E.1., III.E.2.) To the extent funds remain in the Civil Penalty Escrow Account (as defined in the Consent Order) following the Technical Assistance Program kitchen

faucet plumbing remediation work and payment of the contributions, such funds shall constitute a civil penalty and be remitted to the Environmental Protection Trust Fund and County of Will. (*Id.* at ¶¶ III.A., III.E.1., III.E.2.)

### **BASES FOR APPROVAL AND ENTRY**

#### **A. The Roles of the Illinois Attorney General's Office, the Will County State's Attorney's Office, and Illinois EPA in Environmental Protection and Enforcement.**

The Illinois Supreme Court has long recognized that the Attorney General, as the "... chief legal officer of this State, ... has the duty and authority to represent the interests of the People of the State to insure a healthful environment." *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill.2d 119, 138 (1984); *see also* Ill. Const. 1970, art. XI, § 2 ("[e]ach person has the right to a healthful environment"); *Envtl. Prot. Agency v. Pollution Control Bd.*, 69 Ill.2d 394, 398 (1977) ("... under both the 1870 and 1970 constitutions, [] the Attorney General is the chief legal officer of the State; that is, he or she is 'the law officer of the people, as represented in the State government, and its only legal representative in the courts'" (quoting *Fergus v. Russel*, 270 Ill. 304, 337 (1915))). To that end, Section 42(e) of the Act empowers both the Attorney General and the Will County State's Attorney with authority to seek "an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act ... or to require such other actions as may be necessary to address violations...." 415 ILCS 5/42(e) (2022). In addition, the Attorney General and the Will County State's Attorney have common law authority to abate public nuisances. *See, e.g., People ex rel. Scott v. Janson*, 57 Ill.2d 451, 460 (1974) ("... there exists jurisdiction to abate public nuisances which may endanger the general welfare"); *Vill. of Wilsonville v. SCA Services, Inc.*, 86 Ill.2d 1 (1981).

Similarly, the General Assembly established Illinois EPA through Section 4 of the Act, from which it derives its authority. 415 ILCS 5/4 (2022). Illinois EPA is the designated water

pollution, air pollution, solid waste, and pollution control agency for the State, 415 ILCS 5/4(1), and its duties under the Act include conducting investigations and inspections, administering permit and certification programs, and pursuing and supporting enforcement and administrative actions, 415 ILCS 5/4(b)-(k), so as to “restore, protect and enhance the quality of the environment”, 415 ILCS 5/2(b).

Together, the Attorney General, the Will County State’s Attorney, and Illinois EPA serve to protect the environment in Illinois and its citizens’ health and welfare. In this case, the provisions of the Consent Order demonstrate that the Attorney General, the Will County State’s Attorney, and Illinois EPA have enforced the Act and corresponding regulations for the benefit of Illinois’ environment and citizens.

**B. Illinois Law Supports the Approval and Entry of the Consent Order.**

In *People ex rel. Scott v. Janson*, the Illinois Supreme Court stated, “... courts look with favor upon stipulations designed to simplify, shorten or settle litigation and save costs to parties, and will, when called upon in any appropriate manner, compel parties to observe such stipulations unless they are illegal or contrary to public policy.” 57 Ill.2d at 460 (quoting *People ex rel. Stead v. Spring Lake Drainage and Levee District*, 253 Ill. 479, 493 (1912)). Similarly, in reviewing a settlement of an environmental case before the Board, the Third District Appellate Court found that “... the public interest is better served by a procedure which encourages respondents to enter into settlement discussions and negotiations by which respondents may avoid the stigma of finding a violation, and assist the State in effectuating the goals of the Act . . . .” *People v. Archer Daniels Midland Corp.*, 140 Ill. App. 3d 823, 825 (3d Dist. 1986). “By allowing the State and respondents to reason together, the result will conserve resources which would otherwise be expended in litigation.” *Id.*

In this case, the Consent Order has been negotiated in coordination with the Illinois Attorney General's Office, the Will County State's Attorney's Office and Illinois EPA, who possess the requisite technical expertise and statutory responsibility for enforcing the Act and Board regulations. All parties to the above-referenced case were represented by experienced environmental attorneys and knowledgeable technical personnel, and the negotiations have been undertaken in good faith. Approval and entry of the Consent Order at this time is appropriate due to Defendant having obtained Illinois EPA's prior approval of the optimal corrosion control treatment for the Public Water System, met the lead action level for the six-month compliance sampling periods of July 1–December 31, 2021, January 1–June 30, 2022, and June 1–December 31, 2022, and submitted compliance sampling results below 15 ppb for the Public Water System to SDWIS for the period January 1 – September 30, 2023. (*See supra* p. 5.)

The Consent Order is lawful, substantively fair, and reasonable; sets forth the injunctive relief that the People would have sought through the litigation of the case, without the attendant delay and uncertainty associated with litigation or the incurrence of significant costs, thereby also preserving judicial resources; and provides for Defendant's payment of up to \$500,000.00 toward a beneficial project and a civil penalty. Defendant has no objection to the entry of the Consent Order and Agreed Order. Based upon the foregoing, the People respectfully request that the Court approve and enter the Consent Order and Agreed Order, as orders of the Court.

WHEREFORE, the People respectfully request that the Court enter the Consent Order and Agreed Order as orders of the Court, retain jurisdiction over this action in accordance with the terms of the Consent Order, and grant such other and further relief as the Court deems necessary.

Respectfully submitted,  
PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

By: /s/ Kathryn A. Pamenter  
Kathryn A. Pamenter  
Senior Assistant Attorney General  
Stephen J. Sylvester  
Bureau Chief  
Ellen O'Laughlin  
Supervising Attorney  
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PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* JAMES W. GLASGOW,  
State's Attorney for Will County

By: /s/ Mary M. Tatroe  
Mary M. Tatroe  
Civil Division Chief  
Adam Lipitz  
Assistant State's Attorney  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432  
mtatroe@willcountyillinois.com

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

PLAINTIFF'S MOTION FOR APPROVAL AND ENTRY OF CONSENT ORDER

EXHIBIT 1

CONSENT ORDER

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> KWAME RAOUL, Attorney General	)	
of the State of Illinois, and	)	
<i>ex rel.</i> JAMES W. GLASGOW,	)	
State’s Attorney for Will County, Illinois,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AQUA ILLINOIS, INC., an Illinois corporation,	)	
	)	
Defendant.	)	

No. 19CH1208

**CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* JAMES W. GLASGOW, State’s Attorney for Will County, Illinois, (“Plaintiff”), the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and Defendant, AQUA ILLINOIS, INC., (collectively, the “Parties to the Consent Order”), have agreed to the making of this Consent Order and submit it to this Court for approval.

**I. INTRODUCTION**

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2022), the Illinois Pollution Control Board (“Board”) regulations, and common law public nuisance

alleged in the Complaint, except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

**A. Parties.**

1. On August 16, 2019, a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of Illinois EPA, and James W. Glasgow, State’s Attorney for Will County, on his own motion, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2018), against Aqua Illinois, Inc. (“Defendant”).

2. Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2022).

3. At all times relevant to the Complaint, Defendant was and is an Illinois corporation, with its principal place of business located at 1000 South Schuyler Avenue, Kankakee, Kankakee County, Illinois.

4. Defendant owns and operates the public water system having the assigned Public Water System Identification No. IL1975030 (the “Public Water System”), which is located inside and outside the Village of University Park in Will and Cook Counties, Illinois (“Village”). The Public Water System consists of water mains, pumping stations, and other infrastructural components.

5. Plaintiff alleges that at all times relevant to the Complaint, the Public Water System has been located in an area of Environmental Justice (“EJ”) concern as identified using Illinois EPA EJ Start.

6. On December 2, 2019, Aqua filed its Answer to the Complaint.

**B. Agreed Interim Order.**

1. On November 1, 2019, the Court entered an Agreed Interim Order (the “Agreed Interim Order”). The Agreed Interim Order was not a final resolution of the merits of Plaintiff’s Complaint. By entering into the Agreed Interim Order and complying with its terms, Defendant did not affirmatively admit the allegations of violation in the Complaint. This Consent Order supersedes such Agreed Interim Order in its entirety.

**C. Allegations of Non-Compliance.**

Plaintiff contends that Defendant has violated the following provisions of the Act and Board regulations, as well as created and maintained a public nuisance at common law:

Count I: Failure to Provide Assuredly Safe Water in violation of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Board public water supply regulations (“Board PWS Regulations”), 35 Ill. Adm. Code 601.101.

Count II: Violation of Drinking Water Monitoring Site Plan and Sampling Requirements pursuant to Sections 18(a)(2) and 19 of the Act, 415 ILCS 5/18(a)(2) and 19 (2018), and Sections 611.356(a) and (c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.356(a) and (c).

Count III: Violation of Construction Permit Requirements pursuant to Sections 15(a), 18(a)(2), and 18(a)(3) of the Act, 415 ILCS 5/15(a), 18(a)(2) and 18(a)(3) (2018), and Sections 602.101, 602.116, and 602.200 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101, 602.116, and 602.200.

Count IV: Operating Permit Violations pursuant to Sections 18(a)(2) and (3) of the Act, 415 ILCS 5/18(a)(2) and (3) (2018), and Sections 602.101 and 602.300 of the Board PWS Regulations, 35 Ill. Adm. Code 602.101 and 602.300.

Count V: Common Law Public Nuisance.

**D. Non-Admission of Violations.**

Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Defendant does not admit the

allegations of violation within the Complaint referenced above, and Defendant's compliance with this Consent Order shall not be interpreted as including any such admission. Defendant specifically denies the alleged violations in the Complaint and states that it is agreeing to this Consent Order to avoid the cost of litigation and further disruption of its operations. Except as expressly set forth in Paragraph II.1., this Consent Order shall not be used in any other proceeding.

**E. Compliance Activities to Date.**

1. Defendant obtained on September 19, 2018 and November 20, 2018, respectively, an Illinois EPA-issued construction permit and operating permit for the Central Avenue Booster Station of Defendant's Public Water System.

2. Defendant obtained on March 27, 2018, an Illinois EPA-issued operating permit for the water transmission main for Defendant's Public Water System.

3. On its own between June 14, 2019 and November 1, 2019, and in accordance with the Agreed Interim Order after November 1, 2019, Defendant provided alternative sources of drinking water comprising bottled water, faucet filter devices certified by NSF/ANSI Standards 42 and 53, and/or pitcher filters certified by NSF/ANSI Standards 42 and 53, as well as replacement filter cartridges for both filter devices, free of charge to customers of the Public Water System included within the area of Defendant's issued "lead advisory", as that term was described in Paragraphs II.A.1. and II.B. of the Agreed Interim Order, (the "Lead Advisory Area").

4. Between at least June 14, 2019 and December 31, 2022, and as further required by the Agreed Interim Order and Illinois EPA-issued permits, Defendant has been collecting compliance samples in its Public Water System beyond the requisite number set forth in 35 Ill. Adm. Code Part 611, Subpart G ("Lead and Copper Rule").

5. Between November 1, 2019 and the date of the entry of this Consent Order, in accordance with the Agreed Interim Order, Defendant participated in meetings of the “Response Team” (as that term was defined in the Agreed Interim Order), conducted customer-requested tap water sampling, offered customer-requested blood lead level testing, and maintained a dedicated website.

6. On November 30, 2019, consistent with the Lead and Copper Rule and as required by the Agreed Interim Order, Defendant submitted a report to Plaintiff and Illinois EPA presenting the performed comprehensive corrosion control studies and the then-resulting optimal corrosion control treatment recommendation for Illinois EPA’s review and approval, which recommendation Defendant revised on August 4, 2020.

7. On April 17, 2020, Illinois EPA issued to Defendant “Public Water Supply Construction Permit No. 1020-FY2020” for a phosphoric acid chemical treatment system (the “April 2020 Construction Permit”). On April 17, 2020, Illinois EPA issued to Defendant “Operating Permit No. 1020-FY2020” for the phosphoric acid chemical treatment system (the “April 2020 Operating Permit”). After April 17, 2020, Defendant implemented the April 2020 Construction Permit and the April 2020 Operating Permit.

8. On July 30, 2021, Illinois EPA issued to Defendant “Public Water Supply Construction Permit No. 0071-FY2022” to switch to a zinc orthophosphate corrosion control chemical in the Public Water System (the “July 2021 Construction Permit”). On August 3, 2021, Illinois EPA issued to Defendant “Operating Permit 0071-FY2022” to switch to a zinc orthophosphate corrosion control chemical in the Public Water System (“August 2021 Operating Permit”). After July 30, 2021 and August 3, 2021, Defendant implemented the July 2021 Construction Permit and August 2021 Operating Permit, respectively.

9. For the July 1 - December 31, 2021 six-month compliance sampling period, Defendant met the 90th percentile lead action level pursuant to the Lead and Copper Rule.

10. On February 17, 2022, Defendant submitted an optimal corrosion control treatment recommendation to Illinois EPA, revising its August 4, 2020 recommendation and identifying zinc orthophosphate as the optimal treatment (the "February 17 OCCT Recommendation").

11. On March 23, 2022, Illinois EPA issued to Defendant "Public Water Supply Construction Permit No. 0641-FY2022" regarding Defendant's installation of a sulfuric acid feed system consisting of a chemical feed pump (maximum capacity of 3.17gph), scale, piping, controls, and appurtenances at Defendant's Central Avenue Booster Station.

12. For the January 1 - June 30, 2022 six-month compliance sampling period, Defendant met the 90th percentile lead action level pursuant to the Lead and Copper Rule.

13. On August 8, 2022, Illinois EPA issued to Defendant a Special Exception Permit for its Public Water System that approved the February 17 OCCT Recommendation.

14. On August 30, 2022, Illinois EPA issued to Defendant a Special Exception Permit for its Public Water System that set optimal water quality parameter ranges and monitoring frequencies. The August 30, 2022 Special Exception Permit was replaced and superseded by a Special Exception Permit that Illinois EPA issued to Defendant for its Public Water System on December 28, 2022.

15. Between June 14, 2019 and December 31, 2022, Aqua reported to Illinois EPA the results of more than 2,850 compliance samples collected by Defendant from customers served by Defendant's Public Water System.

16. For the June 1 - December 31, 2022 six-month compliance sampling period, Defendant met the 90th percentile lead action level pursuant to the Lead and Copper Rule.

17. On June 29, 2022, Illinois EPA issued to Defendant a Special Exception Permit for its Public Water System that set forth monitoring requirements. Defendant appealed certain conditions of such Special Exception Permit to the Board (PCB 23-12). On December 15, 2022, the Board entered an Opinion and Order, denying Defendant's appeal of certain conditions of the June 29, 2022 Special Exception Permit as moot (PCB 23-12). On January 20, 2023, Defendant filed a Petition for Review of the Board's December 15, 2022 Opinion and Order in the Appellate Court of Illinois for the Third District (Appeal No. 03-23-0023). On June 14, 2023, Illinois EPA issued to Defendant a Special Exception Permit that, among other things, approved annual compliance sampling for its Public Water System. On June 29, 2023, Defendant filed its Substituted Unopposed Motion to Voluntarily Dismiss Petition for Review before the Appellate Court of Illinois for the Third District (the "Appeal Dismissal Motion"). On June 29, 2023, the Appellate Court of Illinois for the Third District entered an Order, granting the Appeal Dismissal Motion and dismissing Appeal No. 03-23-0023.

18. With Illinois EPA's issuance of the June 14, 2023 Special Exception Permit, the compliance sampling period changed to January 1 – September 30, 2023. Each of the compliance sampling results for the Public Water System that Defendant submitted to the Safe Drinking Water Information System (SDWIS) for the period January 1 – September 30, 2023 have been below 15 micrograms per liter (ug/l).

**F. Defendant's Additional Activities.** In addition to the compliance activities described in Section I.E. above, Defendant completed the following (with the dollar amounts being estimated by Defendant):

1. waived water service billing for individuals within the Lead Advisory Area for water usage between May 15, 2019 and January 14, 2022, with a value of over \$3,385,000.00;
2. waived sewer service billing for individuals within the Lead Advisory Area for sewer service between approximately May 15, 2019 and July 15, 2019, and capped sewer service charges for individuals within the Lead Advisory Area for sewer service between August 1, 2019 and October 31, 2021, at a total cost of \$431,000.00;
3. distributed, through its distribution center and homebound deliveries since on or about June 14, 2019:
  - Bottled Water: 1,454,227 gallons
  - Pitcher Filters and Faucet Filter Devices: 6,211
  - Cartridge Replacements: 10,727; and
4. expended, as estimated by Defendant, over \$4,000,000.00 since on or about June 14, 2019, (a) to provide bottled water, filters, filter devices and replacement cartridges, (b) on laboratory work and identifying the optimal corrosion control treatment for Defendant's Public Water System, and (c) to address the impact of internal home lead plumbing sources on tap water quality.

## II. APPLICABILITY

1. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, managers, members, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. Plaintiff may use this Consent Order against Defendant in any subsequent

enforcement action or permit proceeding as provided by Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2022).

2. Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of the entry of this Consent Order. In addition, Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

3. No change in ownership, corporate status or operator of the Public Water System shall in any way alter the responsibilities of Defendant under this Consent Order. In the event that Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, Defendant shall notify Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Public Water System or a portion thereof. Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant site access and all cooperation necessary for Defendant to perform to completion any compliance obligations required by this Consent Order. Defendant shall provide a copy of this Consent Order to any such successor in interest, and Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, Defendant and a proposed purchaser or operator of the Public Water System may jointly request, and Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements

of this Consent Order in place of, or in addition to, Defendant. This provision does not relieve Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable Public Water System permits.

### **III. JUDGMENT ORDER**

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

#### **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

##### **A. Civil Penalty Escrow Account.**

1. Within thirty (30) days of the date of the entry of this Consent Order, Defendant shall deposit the amount of Two Hundred Thousand Dollars (\$200,000.00) in an escrow account ("Civil Penalty Escrow Account") with an escrow agent approved, in writing, by Plaintiff (the "Civil Penalty Escrow Agent"). Defendant shall pay all costs of administration of the Civil Penalty Escrow Account without utilizing monies from such Escrow Account. The Civil Penalty Escrow Account shall be subject to written instructions approved by Plaintiff that, at a minimum, provide for disbursements to be made only:

- a. for: (i) Technical Assistance Program remediation work as described in and conducted pursuant to Paragraph III.E.1.c.iv. below, (ii) payment of the beneficial project contributions pursuant to Paragraph III.E.2. below, (iii) other remediation work at Remediation-Eligible Residences (defined in Paragraph III.E.1.c.iv. below), as Plaintiff shall approve in advance in writing, or (iv) disbursement of the monies remaining in the Civil Penalty

Escrow Account to Plaintiff as a civil penalty upon completion of the items described in subparagraphs (i), (ii) and (iii) of this Paragraph; and

- b. upon the joint written direction of Plaintiff and Defendant, which direction shall not be provided until after all monies in the Beneficial Project Fund and the Supplemental Beneficial Project Fund (as those terms are defined and described in Paragraph III.E.1.e. below) have been expended.

2. No later than ten (10) business days after completion of the items described in Paragraphs III.A.1.a.i. – iii. above, Plaintiff and Defendant shall direct the Civil Penalty Escrow Agent to disburse all remaining funds in the Civil Penalty Escrow Account as follows:

- a. a certified check or money order in the amount of eighty percent (80%) of the remaining funds in the Civil Penalty Escrow Account payable to Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”) to

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276;

with a copy to:

Kathryn A. Pamenter  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General’s Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602; and

- b. a certified check or money order in the amount of twenty percent (20%) of the remaining funds in the Civil Penalty Escrow Account payable to the County of Will to:

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432

- c. The case name and case number shall appear on the face of the certified checks or money orders.

**B. Stipulated Penalties, Interest and Default.**

1. If Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, Defendant shall provide notice to Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first fifteen (15) days of violation, \$500.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. However, failure by Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. If Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

**C. Stipulated Penalty and Interest Payment Procedures.**

1. All payments required by Section III.B of this Consent Order shall be made by certified check or money order payable to Illinois EPA for deposit into the EPTF; *provided, however,* that any stipulated penalties and/or interest due solely for a late civil penalty payment to the County of Will shall be made by certified check or money order payable to the County of Will.

Payments to the EPTF shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

with a copy to:

Kathryn A. Pamenter  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

Payments to the County of Will shall be sent by first class mail and delivered to:

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432

2. The case name and case number shall appear on the face of the certified check or money order.

**D. Future Compliance.**

1. **Compliance Sampling.** Defendant shall utilize the following procedures for lead compliance sampling of its Public Water System:

- a. For each lead compliance sampling event, Defendant shall comply with the sample collection requirements of 35 Ill. Adm. Code 611.356(b).
- b. For each lead compliance sampling event (subject to Paragraph III.D.10. below), Defendant shall collect a lead compliance sample from homes in its lead compliance sampling pool and select the homes by utilizing the random number generator function of Microsoft Excel.
- c. All compliance samples may be collected either by Defendant directly or by customers using sampling supplies and written instructions provided by Defendant (subject to Paragraph III.D.10. below).
- d. Pursuant to 35 Ill. Adm. Code 611.356(a)(1)(D), Defendant shall exclude homes from its compliance sampling pool selection process if a home has a point of use treatment device that cannot be bypassed.
- e. Defendant may exclude homes from its compliance sampling pool selection process if a home has experienced a plumbing disturbance within seventy-

five (75) days of the proposed sampling date, or if a home does not provide Customer Cooperation (as defined in Paragraph III.D.10. below) with respect to a prior sampling event.

- f. Defendant shall not conduct lead compliance sampling in any home at which Defendant performed any technical assistance within thirty (30) days prior to the date of the lead compliance sampling event.
- g. When any technical assistance provided to homes in the compliance sampling pool identifies the presence of lead solder debris in kitchen or bathroom aerators, Defendant shall collect and analyze the chemical composition of the debris if the debris is of sufficient quantity to collect.
- h. Notwithstanding all other applicable requirements of the Lead and Copper Rule, within fifteen (15) days of the completion of each lead compliance sampling period, Defendant shall submit to Illinois EPA a written summary of the lead compliance sampling conducted during such period, which summary shall contain the following information: the number of compliance samples collected; the results of the lead compliance sampling; a summary of any technical assistance provided prior to the collection of each lead compliance sample (outside of the Technical Assistance Program described in Section III.E.1. below); the date that such technical assistance was provided; whether debris was found in aerators within the home; whether debris found within aerators was analyzed by a laboratory; and the results of any debris analysis.

- i. Defendant shall bypass, or provide instructions to the customer regarding how to bypass, any faucet filter prior to collecting lead compliance samples from such faucet. Defendant shall not include in its required compliance sampling any sample of water that has passed through a faucet filter.

**2. Change in Lead Advisory Area Designation.** Commencing on the date of the entry of this Consent Order, the “Lead Advisory Area” shall be referred to thereafter as the “Customer Resources Area”.<sup>1</sup>

**3. Bottled Water.**

- a. No sooner than thirty (30) days after the date of the entry of this Consent Order, Defendant may discontinue its distribution of bottled water to customers in the Customer Resources Area; *provided, however*, that within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send via regular U.S. mail a written notice of such discontinuation to all customers in the Customer Resources Area, a true and correct copy of which is attached hereto as Group Exhibit A and incorporated herein by reference.
- b. At any point after Defendant’s discontinuation of the provision of bottled water in accordance with Paragraph III.D.3.a. above, and continuing until the termination of this Consent Order in accordance with Section III.K. below, Defendant shall provide, at its distribution center, bottled water, free

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<sup>1</sup> For clarity, the change from “Lead Advisory Area” to “Customer Resources Area” is a name change only, which occurs on the date of the entry of this Consent Order. For privacy reasons, a list of Defendant’s customers within the Customer Resources Area is not attached to this Consent Order. Defendant certifies that prior to the filing of the Motion to approve this Consent Order, it provided to Illinois EPA a current, complete list of Defendant’s customers within the Customer Resources Area.

of charge, to any customer located in the Customer Resources Area with a result from compliance sampling (Paragraph III.D.1.), customer-requested sampling (Paragraph III.D.5.), or Technical Assistance Program sampling (Section III.E.), of 100 parts per billion (“ppb”) or higher until such customer’s respective sampling results do not exceed 100 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event; *provided, however*, that Defendant shall deliver bottled water to any such customer that is homebound.

**4. Filters.**

- a. No sooner than sixty (60) days after the date of the entry of this Consent Order, Defendant may discontinue its distribution of filter devices/replacement filter cartridges to customers in the Customer Resources Area; *provided, however*, that within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send via regular U.S. mail a written notice of such discontinuation to all customers in the Customer Resources Area, a true and correct copy of which is attached hereto as Group Exhibit A and incorporated herein by reference.
- b. At any point after Defendant’s discontinuation of the provision of filter devices/replacement filter cartridges in accordance with Paragraph III.D.4.a. above, and continuing until the termination of this Consent Order in accordance with Section III.K. below, Defendant shall provide, at its distribution center, faucet filter devices certified by NSF/ANSI Standards 42 and 53, or pitcher filters certified by NSF/ANSI

Standards 42 and 53, with the respective replacement filter cartridges for both filter devices, free of charge, to any customer located in the Customer Resources Area with a result from compliance sampling (Paragraph III.D.1.), customer-requested sampling (Paragraph III.D.5.), or Technical Assistance Program sampling (Section III.E.), of 15 ppb or higher until such customer's respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event; *provided, however*, that Defendant shall deliver such filter devices and replacement cartridges to any such customer that is homebound. Contemporaneously with the provision of a faucet filter device or pitcher filter in accordance with this Paragraph III.D.4.b., Defendant shall provide the customer with a reminder notice regarding, at a minimum, (i) the proper usage of faucet filter devices, pitcher filters, and replacement filter cartridges for both filter devices, (ii) the availability of replacement filter cartridges, (iii) how to install replacement filter cartridges, and (iv) the timeframes for installing such replacements.

**5. Customer-Requested Sampling.** Notwithstanding anything to the contrary set forth in this Consent Order, commencing upon the date of the entry of this Consent Order and continuing until the date which is one hundred and eighty (180) days after the date of the entry of this Consent Order,

- a. upon request of any customer of the Public Water System (as often as once per month), Defendant shall collect and analyze that customer's kitchen cold water tap for the presence of lead, without charge to the customer;

- b. within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send via regular U.S. mail (i) Group Exhibit A to all customers of the Public Water System in the Customer Resources Area, and (ii) Exhibit B, a true and correct copy of which is attached hereto and incorporated herein by reference, to all customers of the Public Water System not in the Customer Resources Area, which exhibits include a description regarding the availability of customer-requested sampling;
- c. all customer-requested samples may be collected either by Defendant directly or by customers using sampling supplies and written instructions provided by Defendant (subject to Paragraph III.D.10. below);
- d. Defendant shall maintain, and make available to Illinois EPA upon written request, a log of all customer-requested sampling that it conducts, which log shall include, at a minimum, for each customer:
  - i. The date on which the customer initially contacted Defendant to request sampling of such customer's tap water;
  - ii. The date on which the customer's tap water was sampled;
  - iii. The company that conducted the lab analysis;
  - iv. The results of such sampling;
  - v. The dates and results of all subsequent sampling events at the customer's residence or business;
  - vi. A summary of any issues that occurred with respect to any sampling event at the customer's residence or business; and
  - vii. The sampling protocol used to conduct such sampling;

- e. Defendant shall consider, as compliance sampling, the result of any sample collected pursuant to this Paragraph III.D.5. that meets all of the criteria for compliance sampling set forth in 35 Ill. Adm. Code 611.356 and include such sample in its calculation of the 90th percentile lead action level for the corresponding sampling period;
- f. Defendant shall send a copy of the customer-requested sampling results to each corresponding customer via regular U.S. mail within five (5) business days of receipt; and
- g. Defendant may satisfy its sampling collection obligations under this Paragraph III.D.5 by (i) providing a sampling kit with instructions to the customer, and (ii) promptly picking up the sample taken by the customer following notification from the customer that the sample is available.

**6. Nitrate Variability.** Commencing upon the date of the entry of this Consent Order and continuing until the earlier to occur of (a) one year after the date of the entry of this Consent Order, or (b) the date of Illinois EPA's written approval otherwise, Defendant shall, to the extent that nitrate at the entry point to Defendant's Public Water System is detected above seven (7) milligrams per liter, (i) conduct a one-time sampling event by collecting a minimum of 20 lead non-compliance samples from its lead compliance sampling pool, and a nitrate sample from the entry point to Defendant's Public Water System, within 5-15 days of the detection, and (ii) provide the results to Illinois EPA within seven (7) days of receipt. Defendant may satisfy its obligations to collect non-compliance samples under this Paragraph III.D.6. by (y) providing sampling kits with instructions to at least thirty (30) randomly selected customers within its compliance sampling pool within 5-15 days of the detection of nitrate above seven (7) milligrams per liter at the entry

point to Defendant's Public Water System, and (z) promptly picking up the samples taken by such customers following notification from the customer that the collected sample is available.

7. **Website.** Commencing upon the date of the entry of this Consent Order and continuing until the Technical Assistance Program Termination Date (as defined in Paragraph III.E.1. below and, for the sake of clarity, subject to Paragraph III.E.1.h. below), Defendant shall continue to maintain its dedicated website, WaterFactsIL.com, and shall include on such website, at a minimum, (a) all information located on the website as of the date of the entry of this Consent Order, and (b) all additional compliance sampling results (with addresses redacted). Within two (2) business days of mailing the Residential Information Letter (as defined in Paragraph III.E.1.a.i. below), Defendant shall upload a copy of such letter to its website.

8. **No Modification of Corrosion Control Treatment without Illinois EPA Approval.** Commencing upon the date of the entry of this Consent Order, Defendant shall not change its method of corrosion control treatment in the Public Water System unless and until it receives prior written authorization from Illinois EPA pursuant to the requirements of 35 Ill. Adm. Code Part 602.

9. **Appeals.** Defendant retains its right to appeal, consistent with Section 40 of the Act, 415 ILCS 5/40 (2022), and applicable regulations, any permit with conditions, or permit denial, that Illinois EPA issues with respect to the Public Water System.

10. **Customer Cooperation.** The Parties to the Consent Order acknowledge that various inspection, tap sampling, and corrective action obligations of this Consent Order can be completed by Defendant only with customer cooperation during regular business days, Monday through Friday, excluding national and state holidays, at mutually acceptable times. For purposes of this Consent Order, "Customer Cooperation" shall mean: "(a) authorizing entry into the

customer's residence to conduct (i) compliance or technical assistance program sampling, (ii) any inspections of the plumbing, (iii) corrective actions if the lead level exceeds 15 ppb, and/or (iv) other Technical Assistance Program work pursuant to Section III.E.1. below.; and (b) the customer's compliance with sampling instructions provided by Defendant". Notwithstanding any other provision of this Consent Order to the contrary, Defendant shall not be required to complete an otherwise applicable Consent Order requirement with respect to a customer who has declined to provide Customer Cooperation. A customer shall be deemed to have declined cooperation if the customer (i) provides a letter or email to Defendant declining Defendant's request for cooperation, or (ii) fails to provide Customer Cooperation following three (3) attempts by Defendant to obtain cooperation (at least one of the three attempts must include written materials explaining the necessary cooperation); *provided, however*, that Defendant shall grant at least ten (10) days between each attempt and before Defendant makes a determination that a customer has failed to cooperate. Defendant shall maintain a customer cooperation log, a true and correct copy of the form of which is attached hereto as Exhibit C and incorporated herein by reference, and all related letters and emails from customers, a copy of each of which shall be sent to Illinois EPA on the first and fifteenth day of each month (or the next business day to the extent such day falls on a Saturday, Sunday or holiday). Each customer cooperation log that Defendant submits to Illinois EPA shall contain then-current information up to three (3) business days prior to the date of such log submission. Notwithstanding anything to the contrary in this Paragraph III.D.10., for each lead compliance sampling event, Defendant shall comply with the requirements of 35 Ill. Adm. Code 611.356(d) as to the number of compliance samples that must be collected for the Public Water System.

11. **Right of Entry.** Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Will County State's Attorney, his employees and representatives, shall have the right of entry into and upon the Public Water System, which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Will County State's Attorney, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

12. **Compliance with Laws.** This Consent Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, the Board regulations, and the Lead Service Line Replacement and Notification Act, Public Act 102-0613, as each may be updated, amended, or modified prior to the termination of this Consent Order in accordance with Paragraph III.K. below.

13. **Cease and Desist.** Defendant shall cease and desist from future violations of the Act and Board regulations that were alleged in the Complaint.

**E. Beneficial Project.** In addition to Defendant's Additional Activities described in Section I.F. above and the payment as set forth in Section III.A. above, the Parties to the Consent Order agree that Defendant shall perform the following beneficial project:

1. ***Technical Assistance Program for Residential Customers in the Customer Resources Area.*** Commencing upon the date of the entry of this Consent Order and, subject to the requirements in Paragraph III.E.1.h. below, continuing for one year thereafter (the "Technical Assistance Program Termination Date"), Defendant shall establish, fund and implement a "Technical Assistance Program" benefitting

Defendant's customers that own and/or lease a residential house, condominium unit, or apartment unit in the Customer Resources Area (each, a "Residential Customer"), as follows:

a. ***Technical Assistance Program Notification Requirements.***

- i. Within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall send to all of its Residential Customers an information letter (the "Residential Information Letter") and a participation agreement (the "Residential Participation Agreement"), a true and correct copy of the substantially final form of each of which is attached hereto as Group Exhibit A and incorporated herein by reference.
- ii. Within 60-65 days and 120-125 days of the date of the entry of this Consent Order, Defendant shall send a written notice to all of its Residential Customers reminding such customers of the process to sign-up for the Technical Assistance Program and the corresponding deadline.
- iii. Until the passage of the sign-up deadline set forth in Paragraph III.E.1.b. below, Defendant shall include within each water and sewer bill sent to all of its Residential Customers, a reminder of the deadline to sign-up for the Technical Assistance Program and the website address ([WaterFactsIL.com](http://WaterFactsIL.com)) for obtaining additional information.

iv. Until the passage of the sign-up deadline set forth in Paragraph III.E.1.b. below, Defendant shall post on its website (WaterFactsIL.com) the Residential Information Letter, the deadline to sign-up for the Technical Assistance Program, and the instructions to sign-up for the Technical Assistance Program.

v. Within fourteen (14) days of the date of the entry of this Consent Order, Defendant shall submit a press release to the Daily Southtown and WUPC-TV regarding the Technical Assistance Program, the process for signing up for the Technical Assistance Program, and the corresponding deadline for sign-up.

b. ***Technical Assistance Program Sign-up Deadline.*** Residential Customers shall have two hundred and forty days (240) from the date of the entry of this Consent Order to sign up for the Technical Assistance Program. To sign up for the Technical Assistance Program, a Residential Customer must provide Defendant with an executed Residential Participation Agreement prior to the sign-up deadline.

c. ***Technical Assistance Program Steps.*** Within thirty (30) days of the date that each Residential Customer signs up for the Technical Assistance Program, Defendant shall schedule work to commence the following applicable steps at each such Residential Customer's residence. Subject to Paragraph III.E.1.h. below, Defendant shall complete the following applicable steps at each Residential Customer's residence on or before the

Technical Assistance Program Termination Date, all of which shall be free of charge to such Residential Customer.

- i. Collect a pre-inspection sample for lead from the residence's kitchen cold water tap pursuant to the protocol described in Paragraph III.E.1.d. below.
- ii. To the extent that the pre-inspection sample result is above 15 ppb for lead, perform an in-residence inspection. The in-residence inspection shall include at a minimum, where determined necessary, the following elements: kitchen faucet aerator cleaning and/or replacement; readily visible inspection of the plumbing configuration with a specific emphasis on identifying the presence of lead solder joints and lead solder application technique; water softener education; inspection of any faucet filter or pitcher filter in use to ensure the Residential Customer is using, and can use, the filter correctly; and replacement filter cartridge education. When any in-residence inspection identifies the presence of lead solder debris in kitchen aerators, Defendant shall collect and analyze the chemical composition of debris if of sufficient quantity for laboratory analysis.
- iii. To the extent that an in-residence inspection is performed, collect a post-inspection tap water sample for lead from the residence's kitchen cold water faucet pursuant to the protocol described in

Paragraph III.E.1.d. below, no earlier than fourteen (14) days after Defendant's completion of the in-residence inspection.

- iv. To the extent that a post-inspection sample result exceeds 15 ppb for lead, the corresponding house, condominium unit, or apartment unit will be eligible for remediation of lead solder and/or lead-containing fixtures at the kitchen faucet (a "Remediation-Eligible Residence") up to the cost of \$2,000.00 per Remediation-Eligible Residence to be paid in accordance with Paragraph III.E.1.e. below. Within five (5) business days after determining that a house, condominium unit, or apartment unit constitutes a Remediation-Eligible Residence, Defendant shall provide the owner and/or lessee of such Remediation-Eligible Residence a fact sheet, a true and correct copy of which is attached hereto as Exhibit D and incorporated herein by reference, that explains how such Residential Customer may arrange for an Illinois-licensed third-party plumber to conduct remediation of lead solder and/or lead-containing fixtures at the kitchen faucet, the payment for which shall be paid in accordance with Paragraph III.E.1.e. below up to the cost of \$2,000.00 per Remediation-Eligible Residence (the "Remediation-Eligible Residence Fact Sheet"). The Remediation-Eligible Residence Fact Sheet shall also (aa) grant each corresponding Residential Customer sixty (60) days to schedule an appointment with the Illinois-licensed third-party plumber or report to Defendant any difficulty in doing

so; (bb) provide instructions for the Residential Customer to schedule with Defendant the collection of a post-remediation work kitchen tap cold water sample for lead; *provided, however*, that such sample shall be collected no earlier than seventy-five (75) days after the completion of the kitchen faucet remediation work and in accordance with the protocol set forth in Paragraph III.E.1.d. below; and (cc) state that if the post-remediation work sample is above 15 ppb for lead, the customer would receive free filter devices for the kitchen faucet from Defendant until such customer's respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event.

d. ***Technical Assistance Program Sample Collection Process.*** For all Technical Assistance Program samples, Defendant shall utilize the following protocol:

i. Each sample may be collected either by Defendant directly or by customers using sampling supplies and written instructions provided by Defendant (subject to Paragraph III.D.10. above). Such written instructions shall advise the customers regarding how to bypass a faucet filter prior to collecting samples from such faucet, should such customer have a point of use treatment device that may be bypassed.

- ii. Each sample shall be collected from the kitchen tap after a six-hour stagnation, and no aerator removal or cleaning shall be conducted within 96 hours prior to the day of such sample collection.
- iii. All samples shall equal 1 liter in volume, collected in 500-milliliter sequential samples.
- iv. Defendant may decide not to process any sample based on paperwork deficiencies or other issues, including without limitation, inadequate volume, sample taken from the wrong tap, and suspicion of sampling error or tampering; *provided, however*, that Defendant shall prepare documentation regarding the issue and submit such documentation on a monthly basis to Illinois EPA on the fifth (5th) business day of each month for the preceding month. In any of the foregoing instances, Defendant shall attempt to collect a replacement sample and document any such attempt(s).
- v. Defendant shall send all collected Technical Assistance Program samples to a laboratory that meets the certification requirements of 35 Ill. Adm. Code 611.490.
- vi. Defendant shall cause the Technical Assistance Program samples to be analyzed for lead and, at the discretion of Defendant, tin.
- vii. In addition to the reporting requirements described in Paragraph III.E.1.g. below, Defendant shall send a copy to customers of their respective sampling results via regular U.S. mail within five (5) business days of receipt.

e. ***The Beneficial Project Fund and the Supplemental Beneficial Project Fund.***

- i. Within thirty (30) days of the date of the entry of this Consent Order, Defendant shall remit the sum of Two Hundred Thousand Dollars (\$200,000.00) into an escrow account to be held in trust for the benefit of the Residential Customers who own and/or lease Remediation-Eligible Residences to pay the costs of remediation of lead solder and/or lead-containing fixtures at the kitchen faucet as described in Paragraph III.E.1.c.iv. above, (the “Beneficial Project Fund”). The escrow agent of the Beneficial Project Fund (the “Beneficial Project Escrow Agent”) and the terms of the escrow account shall be approved, in writing, by Plaintiff and Defendant. Defendant shall pay all costs of administration of the Beneficial Project Fund (and Supplemental Beneficial Project Fund (as defined in Paragraph III.E.1.e.iv. below)) without utilizing monies from such Funds.
- ii. Within thirty (30) days of being provided a copy of the invoice from the Illinois-licensed third-party plumber, Defendant shall instruct the Beneficial Project Escrow Agent to pay such plumber retained by the owner and/or lessee of each Remediation-Eligible Residence, up to the sum of \$2,000.00 per Remediation-Eligible Residence, from the Beneficial Project Fund.
- iii. To the extent that monies remain in the Beneficial Project Fund after:

- aa. the completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above), up to the sum of \$2,000.00 per Remediation-Eligible Residence, and
  - bb. the payments of the beneficial project contributions as set forth in Paragraph III.E.2. below,  
within ten (10) business days of the completion of such contributions, Defendant shall instruct the Beneficial Project Escrow Agent to disburse the remaining monies in the Beneficial Project Fund to the EPTF and the County of Will in accordance with Section III.A. above.
- iv. To the extent that the Beneficial Project Fund is exhausted prior to:
- aa. the completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above), up to the sum of \$2,000.00 per Remediation-Eligible Residence, and
  - bb. the payments of the beneficial project contributions as set forth in Paragraph III.E.2. below,  
Defendant shall replenish the Beneficial Project Fund with an additional payment of One Hundred Thousand Dollars (\$100,000.00), beyond the initial payment of \$200,000.00 described

above (the "Supplemental Beneficial Project Fund"). For the sake of clarity, the Beneficial Project Escrow Agent shall serve as the escrow agent for the Supplemental Beneficial Project Fund, and Plaintiff and Defendant shall approve, in writing, the terms of the Supplemental Beneficial Project Fund.

v. Upon completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above), up to the sum of \$2,000.00 per Remediation-Eligible Residence, the remaining monies in the Supplemental Beneficial Project Fund shall be:

aa. First, expended for the beneficial project contributions as set forth in Paragraph III.E.2. below; and

bb. Second, remitted to Defendant at the joint written direction of Plaintiff and Defendant no later than ten (10) business days following the date of the payments of the beneficial project contributions in accordance with Paragraph III.E.2. below.

f. ***Availability of Civil Penalty Escrow Account Monies.*** Solely to the extent that Defendant utilizes all monies in the Beneficial Project Fund and the Supplemental Beneficial Project Fund (for the sake of clarity, \$300,000.00) for (i) the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in

Paragraph III.E.1.c.iv. above), up to the sum of \$2,000.00 per Remediation-Eligible Residence, and (ii) payment of the beneficial project contributions as set forth in Paragraph III.E.2. below, the monies in the Civil Penalty Escrow Account shall become available for remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at Remediation-Eligible Residences up to the sum of \$2,000.00 per Remediation-Eligible Residence, the payments of the beneficial project contributions, and/or other remediation work at Remediation-Eligible Residences as Plaintiff shall approve in advance in writing, each in accordance with Paragraph III.A.1. above, Paragraph III.E.1.c.iv. above, and Paragraph III.E.2. below.

**g. *Reporting Requirements to Plaintiff and Illinois EPA.*** No later than ten (10) business days after the end of each month, Defendant shall for the prior month:

**i.** submit to Plaintiff and Illinois EPA, for each house, condominium unit and apartment unit, the date that each Residential Customer signed up for the Technical Assistance Program; the date of each pre-inspection sample, residence inspection, and post-inspection sample conducted; the results of all pre- and post-inspection sampling conducted; the date on which the Remediation-Eligible Residence Fact Sheet was sent to the owner and/or lessee of each Remediation-Eligible Residence; documentation regarding any issue pursuant to Paragraph III.E.1.d.iv. above; a summary of any provided technical assistance, including any remediation of lead

solder and/or lead-containing fixtures at the kitchen faucet; a summary of any unperformed remediation work; the date and corresponding address of Defendant's receipt of each invoice for remediation of lead solder and/or lead-containing fixtures at the kitchen faucet; the date and corresponding address of the payment of each such invoice; and a list of all Residential Customers who requested a post-remediation work sample, the date of such request, the date the post-remediation work sample was taken, and the results of such sampling; and

ii. submit to Plaintiff and Illinois EPA the amount of monies expended from the Beneficial Project Fund and/or the Supplemental Beneficial Project Fund during the prior month and cumulatively to date.

h. ***Technical Assistance Program Caveats.*** Notwithstanding anything in this Consent Order to the contrary,

i. Defendant shall continue to completion all technical assistance, including, subject to Paragraph III.E.1.h.ii., remediation of lead solder and/or lead-containing fixtures at the kitchen faucet, at each house, condominium unit, and apartment unit, still in-progress as of the Technical Assistance Program Termination Date, and shall continue to submit to Illinois EPA the reports required under Paragraph III.E.1.g. above until all technical assistance still in-

progress as of the Technical Assistance Program Termination Date is completed.

- ii. Defendant's obligation to arrange for and fund remediation work under the Technical Assistance Program will terminate upon the exhaustion of the Beneficial Project Fund, the Supplemental Beneficial Project Fund, and, to the extent the Civil Penalty Escrow Account funds are made available for remediation work by Plaintiffs, the Civil Penalty Escrow Account.

2. ***Beneficial Project Contingent Contributions.***

- a. To the extent that at least \$3,000.00 remains in the Beneficial Project Fund in accordance with Paragraph III.E.1.e.iii. above, the Supplemental Beneficial Project Fund in accordance with Paragraph III.E.1.e.iv. above, and/or the Civil Penalty Escrow Account in accordance with Paragraph III.E.1.f. above, Defendant shall, within ten (10) days after obtaining any necessary approvals from Plaintiff, instruct the Beneficial Project Escrow Agent and/or the Civil Penalty Escrow Agent, as applicable, to make the following beneficial project contributions:

- i. Fifty Thousand Dollars (\$50,000.00) to the Crete-Monee School District 201-U earmarked for lead in drinking water sampling, remediation and/or other related work at the Crete-Monee Middle School and Coretta Scott King Magnet School; *provided however*, that if less than \$55,000.00 remains, the amount of the contribution shall be ninety percent (90%) of the available monies as jointly

determined by Plaintiff and Defendant in writing. The payment shall be paid by certified check or money order made payable to the Crete-Monee School District 201-U and shall be sent by overnight mail to:

Crete-Monee School District 201-U  
c/o Dr. Kara Coglianese, Superintendent  
690 W. Exchange Street  
Crete, IL 60417

- ii. Five Thousand Dollars (\$5,000.00) to PK's Christian Learning Site earmarked for lead in drinking water sampling, remediation and/or other related work; *provided however*, that if less than \$55,000.00 remains, the amount of the contribution shall be ten percent (10%) of the available monies as jointly determined by Plaintiff and Defendant. The payment shall be paid by certified check or money order made payable to PK's Christian Learning Site and shall be sent by overnight mail to:

PK's Christian Learning Site  
c/o Priscilla Dede Baffour, President and  
Registered Agent  
82 Town Center  
University Park, IL 60484

- iii. A copy of each of the checks and the transmittal letters shall be sent to:

Kathryn A. Pamentor  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602; and

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432

- b. To the extent that less than \$3,000.00 remains in the Beneficial Project Fund in accordance with Paragraph III.E.1.e.iii. above, the Supplemental Beneficial Project Fund in accordance with Paragraph III.E.1.e.iv. above, and/or the Civil Penalty Escrow Account in accordance with Paragraph III.E.1.f. above, Defendant shall instruct the Beneficial Project Escrow Agent and/or the Civil Penalty Escrow Agent to disburse the remaining monies to the EPTF and the County of Will in accordance with Section III.A. above within ten (10) days of the completion of the remediation of lead solder and/or lead-containing fixtures at the kitchen faucet at all Remediation-Eligible Residences (as described in Paragraph III.E.1.c.iv. above and up to the sum of \$2,000.00 per Remediation-Eligible Residence).

3. ***Beneficial Project Certification.*** By its signature on this Consent Order, Defendant certifies that, as of the date of the entry of this Consent Order, it is not required to perform or develop the foregoing beneficial project by any federal, state or local law or regulation, nor is it required to perform or develop the foregoing beneficial project by agreement or injunctive relief in any other case. Defendant further certifies that it has not received, and is not presently negotiating to receive credit for, the foregoing beneficial project in any other enforcement action.

4. **Beneficial Project Statement Requirement.** Any public statement, oral or written, in print, film or other media, made by Defendant making reference to the foregoing beneficial project shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General, Illinois EPA and Will County State’s Attorney’s Office in the matter of *People of the State of Illinois, ex rel. Kwame Raoul, Attorney General of the State of Illinois and ex. rel. James W. Glasgow, State’s Attorney for Will County, Illinois, v. Aqua Illinois, Inc.* (Case No.19CH1208).”

**F. Force Majeure.**

1. *Force majeure* is an event arising solely beyond the control of Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, Defendant shall orally notify Illinois EPA (David Cook at (217) 782-0078) within forty-eight (48) hours of the occurrence. Written notice shall be given to Plaintiff’s representatives as listed in Section III.I. of this Consent Order as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, Plaintiff shall respond in writing regarding Defendant’s claim of a delay or impediment to performance. If Plaintiff agrees that the delay or impediment to performance has been or will be

caused by circumstances beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of reasonable due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If Plaintiff does not accept Defendant's claim of a *force majeure* event, Defendant must file a petition with the Court within twenty (20) calendar days of receipt of Plaintiff's determination in order to contest the imposition of stipulated penalties. Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of reasonable due diligence, Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

**G. Enforcement and Modification of Consent Order.**

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Defendant agrees

that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the representatives designated in Section III.I. of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

**H. Dispute Resolution.**

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or Plaintiff's rejection of a request for modification or termination of the Consent Order. Plaintiff reserves the right to seek enforcement by the Court where Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These

informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, Plaintiff shall provide Defendant with a written summary of its position regarding the dispute. The position advanced by Plaintiff shall be considered binding unless, within twenty (20) calendar days of Defendant's receipt of the written summary of Plaintiff's position, Defendant files a petition with this Court seeking judicial resolution of the dispute. Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, Plaintiff's written summary of its position, Defendant's petition before the Court and Plaintiff's response to the petition. Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

**I. Notice and Submittals.**

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to Plaintiff

Stephen J. Sylvester  
Bureau Chief  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
Stephen.Sylvester@ilag.gov  
(via Email Only)

Mary M. Tatroe  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432  
mtatroe@willcountyillinois.com  
(via email only)

Michael Roubitchek  
Deputy General Counsel, Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
Mike.Roubitchek@illinois.gov  
(via email only)

David C. Cook, P.E.  
Manager, Permit Section  
Division of Public Water Supplies  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
David.Cook@Illinois.gov  
(via email only)

FOR DEFENDANT  
Aqua Illinois, Inc.  
Attn: Mr. David Carter, President  
1000 S. Schuyler Avenue  
Kankakee, IL 60901  
DCCarter@aquaamerica.com  
(via email only)

Daniel J. Deeb  
ARENTFOX SCHIFF LLP  
233 South Wacker Drive, Suite 7100  
Chicago, IL 60606  
Dan.Deeb@afslaw.com  
(via email only)

**J. Release from Liability.**

In consideration of Defendant's payment of \$200,000.00 in accordance with Paragraph III.A.1., its undertaking of the beneficial project as contained in Section III.E., its commitment to cease and desist as contained in Paragraph III.D.13. above, and completion of all activities required hereunder, Plaintiff releases, waives and discharges Defendant from any further liability or penalties for the alleged violations of the Act and Board regulations and common law public nuisance that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on August 16, 2019. Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than Defendant.

**K. Termination.**

1. Defendant may request that this Consent Order terminate no sooner than eighteen (18) months after Defendant has completed all actions required of Defendant in the Consent Order, *provided that* Defendant has been in continuous compliance with the terms of the Consent Order for the eighteen (18) months preceding the request. Any such request must be made by notice to Plaintiff and include a statement that Defendant has completed all actions required by this Consent Order and has been in continuous compliance with the terms of the Consent Order for the eighteen (18) months preceding the request and the following certification by a responsible corporate official of Defendant:

I certify under penalty of law that this statement was prepared under my direction or supervision, and that the information submitted in or accompanying this statement of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment for knowing violations.

2. Plaintiff shall notify Defendant of its decision on the request within forty-five (45) calendar days of Plaintiff's receipt of the request. If Plaintiff agrees to terminate this Consent Order, Plaintiff and Defendant shall jointly file a notice with the Court that the Consent Order is terminated. If Plaintiff does not agree to terminate this Consent Order, Plaintiff shall provide Defendant written notification stating the reasons why this Consent Order should not be terminated and Defendant may then invoke the Dispute Resolution provisions. The Consent Order shall remain in effect pending resolution of any dispute by the parties or the Court concerning whether Defendant has completed its obligations under this Consent Order and is in compliance with the terms of the Consent Order. The provisions of Paragraph III.D.13. (Cease and Desist) and Section III.J (Release from Liability) of this Consent Order shall survive and shall not be subject to and are not affected by the termination of any other provision of this Consent Order.

**L. Execution and Entry of Consent Order.**

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

*[Remainder of Page Blank; Text Continues on Page 46]*

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

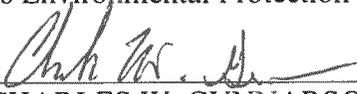
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:   
STEPHEN J. SYLVESTER, Chief  
Assistant Attorney General  
Environmental Bureau

DATE: 10/3/23

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: 10/3/23

*ex rel.* JAMES W. GLASGOW  
State's Attorney for Will County

BY: \_\_\_\_\_  
MARY M. TATROE  
Civil Division Chief  
Office of the Will County State's Attorney

DATE: \_\_\_\_\_

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
STEPHEN J. SYLVESTER, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

*ex rel.* JAMES W. GLASGOW  
State's Attorney for Will County

BY: Mary M. Tatroe  
MARY M. TATROE  
Civil Division Chief  
Office of the Will County State's Attorney

DATE: 10-2-2023

*Signature Page to Consent Order in People of the State of Illinois v. Aqua Illinois, Inc. (Case No. 19CH1208).*

FOR DEFENDANT:

AQUA ILLINOIS, INC.

BY:   
Its: President

DATE: October 3, 2023

ENTERED:

\_\_\_\_\_  
JUDGE

DATE: \_\_\_\_\_  
\_\_\_\_\_

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**CONSENT ORDER**

GROUP EXHIBIT A

**IMPORTANT NOTICE REGARDING BOTTLED WATER, FILTER DEVICES, AND  
TECHNICAL ASSISTANCE PROGRAM**

**TO: CUSTOMERS OF AQUA ILLINOIS, INC.'S PUBLIC WATER SYSTEM THAT RESIDE IN THE CUSTOMER RESOURCES AREA, PREVIOUSLY KNOWN AS THE LEAD ADVISORY AREA.**

As you may recall, on approximately July 29, 2019, Aqua Illinois, Inc. (“Aqua”) issued a “lead advisory” to certain customers of Aqua’s public water system having the assigned Public Water System Identification No. IL1975030 (“Public Water System”), which is located inside and outside the Village of University Park in Will and Cook Counties, Illinois. That area, previously referred to as the “lead advisory area,” is now the “Customer Resources Area.”

On October \_\_, 2023, the Will County Circuit Court entered a Consent Order in *People of the State of Illinois v. Aqua Illinois, Inc.*, Case No. 19CH1208 (the “Consent Order”), which sets forth certain requirements for Aqua customers located in the Customer Resources Area. Aqua is a party to the Consent Order. A copy of the Consent Order and additional information relating to this Notice may be found on Aqua’s website, [WaterFactsIL.com](http://WaterFactsIL.com).

This Notice is provided for the following five purposes:

**First**, this Notice advises that drinking water from Aqua’s Public Water System has met the lead in drinking water compliance standard for more than two full years. The prior Agreed Interim Order required Aqua to continue providing bottled water and filter devices during this period while the Illinois Environmental Protection Agency (“Illinois EPA”) evaluated the effectiveness of the corrosion control treatment under varying source water conditions.

**Second**, in accordance with the Consent Order, this Notice advises customers in the Customer Resources Area that Aqua will cease to provide free bottled water to such customers as of *[insert date 30 days after consent order entry]*.

**Third**, in accordance with the Consent Order, this Notice advises customers in the Customer Resources Area that Aqua will cease to provide free filter devices to such customers as of *[insert date 60 days after consent order entry]*.

**Fourth**, if you are a residential customer, your house, condominium unit, or apartment unit (the “House”) has been identified as one which may be eligible to

participate in the “Technical Assistance Program” under the Consent Order because it is located in the Customer Resources Area. Both Aqua and Illinois EPA recommend that you participate in the program. **Please read the following materials carefully.**

**A. What Activities are Included in the Technical Assistance Program?**

As more fully described in the Consent Order, each House that participates in the Technical Assistance Program will be eligible to receive the following services, free of charge:

- Collection of an initial tap water sample for lead from your kitchen cold water faucet.
- If the result of the initial tap water test is above 15 parts per billion (ppb) for lead, you will be eligible to receive free filter devices, and then an inspection of the visible plumbing for your kitchen faucet, completion of initial corrective actions, and then the collection of an additional tap water sample for lead from your kitchen cold water faucet.
- If the additional tap water test is also above 15 parts per billion (ppb) for lead, you will continue to be eligible to receive free filter devices, and Aqua will connect you with an Illinois-licensed third-party plumber who will further inspect and remediate lead solder and/or lead-containing fixtures at the kitchen faucet, which work would be paid directly by Aqua up to a cost of \$2,000.00.

After a minimum of 75 days from the completion of the kitchen faucet remediation work, you may contact Aqua to collect another kitchen tap cold water sample for lead. If that sample is above 15 parts per billion (ppb) for lead, you would receive free filter devices for that faucet from Aqua until your respective sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event.

**B. What is the deadline for Customers in the Customer Resources Area to sign-up for the Technical Assistance Program?**

The deadline to sign-up for the Technical Assistance Program is:  
\_\_\_\_\_ *[insert date 240 days from consent order entry].*

**C. How do you, as a Customer in the Customer Resources Area, sign-up for the Technical Assistance Program?**

If you wish to participate in the Technical Assistance Program, please complete all portions of the Participation Agreement attached as Exhibit 1 and return a copy to Aqua in person or by U.S. mail at *[insert Aqua-dedicated Customer Resources Area ("CRA") mailing address]* or via email at *[insert Aqua-dedicated CRA email address]*, no later than \_\_\_\_\_ *[insert date 240 days from consent order entry]*. You are encouraged (a) to return your completed Participation Agreement via certified mail, such that there is proof of mailing/delivery, if you elect that method of delivery, and (b) to keep a copy of your completed Participation Agreement for your records.

Importantly, the Technical Assistance Program is limited to a maximum of \$500,000 worth of kitchen faucet remediation work for all eligible customers. You are thus encouraged to sign up for the Technical Assistance Program as soon as you can.

**D. Are you, as a Customer in the Customer Resources Area, required to participate in the Technical Assistance Program?**

No. Your choice to participate or not participate in the Technical Assistance Program is strictly voluntary; no customer will be forced to participate. Nothing in this Notice or the Participation Agreement shall be deemed to waive, discharge, release or otherwise impact any private causes of action or rights that may exist against Aqua, and Aqua reserves all rights and defenses regarding any such private causes of action or rights.

**E. How do you get more information?** Further details are provided within the Consent Order. A copy of the Consent Order is available at *[add link]*. If you have questions, you also may call *[insert dedicated Aqua phone number]*. If you should get a voicemail message, please leave your name, telephone number, time of your call, and telephone number at which you can be reached. Subject to exceptional circumstances, your call should be returned within two (2) business days.

**Fifth**, if you are not interested in participating in the Technical Assistance Program but would like your water sampled for lead, without any charge, you may

contact Aqua at [*insert dedicated Aqua CRA phone number*] once per month prior to [*insert 180<sup>th</sup> day*]. Please follow the sampling instructions to ensure a timely and accurate sampling result.

Exhibit 1

**PARTICIPATION AGREEMENT**

*Please fill out this form completely – all information is needed.*

*Where applicable, both the owner(s) and the tenant(s) must complete this form.*

- Full street address of the house, apartment unit or condominium unit: \_\_\_\_\_ (the “House”)
- Full legal names of all owners of the House: \_\_\_\_\_  
\_\_\_\_\_ (collectively, the “Owners”) (*print name of each owner of the house*)
- The House [is/is not](*circle one*) a rental property. If the House is a rental property, the tenants of the House consist of the following people: \_\_\_\_\_  
(collectively, the “Tenants”) (*print name of each tenant of the House*)
- House Contact Information: \_\_\_\_\_  
(*print the telephone and/or email address for the individual you wish Aqua to contact regarding this Participation Agreement*)

The Owners, and if the House is a rental property, the Tenants, each agree as follows:

1. We/I have read and understand the IMPORTANT NOTICE REGARDING BOTTLED WATER, FILTER DEVICES, AND TECHNICAL ASSISTANCE PROGRAM mailed to us/me, and which is also available at [*insert link to WaterFacts site page*].
2. We/I wish for the House to be included in the Technical Assistance Program, as established under the Consent Order.
3. We/I will (a) allow Aqua or its assignee entry and reasonable access to the House during normal business days, Monday through Friday, excluding national and state holidays, at mutually acceptable times, for all sampling, inspection and repair work contemplated by the Consent Order, and (b) collect tap samples from the House’s kitchen faucet in accordance with the written sampling procedures provided by Aqua. This is referred to as “Customer Cooperation” under the Consent Order. We/I agree that Aqua may use the contact telephone number or email address stated above as the exclusive means to arrange for access to the House. Prior to any sampling in the House conducted by Aqua, we/I will ensure that the kitchen tap is not used for at least 6 hours and that cold water was last used at the kitchen tap.
4. If the House has a treatment or filtration system for the kitchen faucet that may be bypassed, we/I agree to follow instructions provided by Aqua to bypass that system.
5. We/I acknowledge that the Illinois-licensed third-party plumber contemplated by the Consent Order would be chosen and paid directly by Aqua up to \$2,000.00. We/I also acknowledge that we/I fully release Aqua from any responsibility or liability relating to any work that such plumber performs in the House pursuant to

the requirements of the Consent Order. We/I further also agree that (a) any claims we/I may come to have relating to such plumber's access or work will be limited to the terms of the warranty provided by such plumber, and (b) the terms of this Section 5 shall survive any termination of this Participation Agreement.

6. We/I may withdraw from the Technical Assistance Program at any time by sending a letter to Aqua at [*insert dedicated CRA mailing address*] or an email to Aqua at [*insert dedicated CRA email address*] asking to terminate this agreement.
7. We/I have had the opportunity to consult with legal counsel prior to signing below.
8. We/I will advise Aqua in writing at [*insert dedicated CRA mailing address and email*] of any change in ownership of the House, and if the House is rented, of any change in the tenants of the House, at least fifteen (15) days before such change. All services for the House under the Technical Assistance Program will be temporarily suspended immediately upon the change in ownership or tenancy. The temporary suspension will become permanent, such that the House shall no longer be eligible for services under the Technical Assistance Program, unless a replacement Participation Agreement signed by all remaining and new owners (and, if applicable, all remaining and new tenants) is provided to Aqua within fifteen (15) days of the change in ownership or tenancy.
9. We/I acknowledge that compliance with all of the terms of this Participation Agreement is a requisite for participation in the Technical Assistance Program and that the free services of the program will cease to be provided to the House if we/I do not comply with these terms.

Owner Signatures. By executing immediately below, the undersigned certify under penalty of perjury as provided for by 28 U.S.C. § 1746, that he/she/it/they is/are the owner(s) of the House and that there is/are no other owner(s) of the House.

\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

Tenant Signatures. By executing this form below, the undersigned certify under penalty of perjury as provided for by 28 U.S.C. § 1746, that he/she/it/they is/are the tenant(s) of the House and that there is/are no other tenant(s) of the House.

\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

Once fully completed, this Participation Agreement should be sent to Aqua at the below address:

*[Insert dedicated CRA mailing address]*

Certified mailing is recommended but not required.

*[Insert dedicated CRA email address]*

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**CONSENT ORDER**

EXHIBIT B

(Mailing)

**TO: CUSTOMERS OF AQUA ILLINOIS, INC.'S PUBLIC WATER SYSTEM OUTSIDE OF THE CUSTOMER RESOURCES AREA**

If you would like your water sampled for lead, without any charge, you may contact Aqua at [*insert non-Customer Resources Area phone number*] once per month prior to [*insert 180<sup>th</sup> day*]. A copy of the sampling results will be mailed to you. Please follow the sampling instructions to ensure a timely and accurate sampling result.

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**CONSENT ORDER**

EXHIBIT C

Premise	Customer Name	Customer Contact Information Telephone Email Address	Purpose of Contact [Compliance Sampling, In-home Sampling, TAP, Inspection Sampling, TAP Inspection, TAP Post-Inspection Sampling]	Date of 1st Contact Attempt	Means of 1st Contact Attempt* (Phone/email/text)	Result of 1st Contact Attempt (E.g., no answer, refusal, asked for more information)	Date of 2nd Contact Attempt (at least 10 days after 1st contact)	Means of 2nd Contact Attempt* (Phone/email/text)	Result of 2nd Contact Attempt (E.g., no answer, refusal, asked for more information)	Date of 3rd Contact Attempt (at least 10 days after 2nd contact)	Means of 3rd Contact Attempt* (Phone/email/text)	Result of 3rd Contact Attempt (E.g., no answer, refusal, asked for more information)

\* At least 1 of the 3 contact attempts must be a letter or email. If the customer provides a letter or email, declining cooperation, no further contact attempts are necessary.

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**CONSENT ORDER**

EXHIBIT D

**Technical Assistance Program**  
**Remediation-Eligible Residence Fact Sheet**  
**Regarding**  
**Kitchen Faucet Plumbing Remediation Work**

Thank you for participating in the Technical Assistance Program. Based on the kitchen tap water sampling conducted at your house, condominium unit, or apartment unit (“House”) under that program, the kitchen faucet of your House is eligible for certain plumbing remediation work which will be paid by Aqua directly up to a cost of \$2,000.00. A description of the possible kitchen faucet plumbing work and instructions on how to arrange for that work are provided below.

1. ***What kitchen faucet plumbing work will be done?*** An Illinois-licensed third-party plumber will inspect the plumbing of your kitchen faucet for lead-containing plumbing. Such plumber will then remediate exposed lead-containing plumbing, namely lead solder and/or lead-containing fixtures at the kitchen faucet, with lead-free materials. Such plumber will not remove and replace any drywall, plaster, wall, flooring, ceiling or cabinetry, but instead will inspect and replace readily visible lead-containing kitchen faucet plumbing.
2. ***Who will do the plumbing work?*** The kitchen faucet plumbing work will be done by *[Plumber]*. *[Plumber]* is an Illinois-licensed third-party plumber.
3. ***How will this plumbing work be paid for?*** *[Plumber]* will bill Aqua directly up to a cost of \$2,000.00. For your records, *[Plumber]* will leave a copy of the invoice at your House following completion of the work. To the extent that *[Plumber]* arrives at your House at the scheduled date/time to conduct the kitchen faucet plumbing work and *[Plumber]* cannot then access your House, the minimum no-show charge (equivalent to two hours of work) will be assessed against the available \$2,000.00 amount for kitchen faucet plumbing work at your House.
4. ***How do I schedule the plumbing work for my House?*** Please call *[Plumber]* at *[phone]* to schedule the kitchen faucet plumbing work for your House. Because the funding of the Technical Assistance Program is limited, you are encouraged to call *[Plumber]* as soon as possible. If you have any difficulty reaching *[Plumber]*, please call Aqua at *[phone]*. If you have not scheduled the appointment with *[Plumber]*, or if Aqua does not hear from you, by \_\_\_\_\_ (which is sixty (60) days after the date of this Fact Sheet set forth below), your House will no longer be eligible for kitchen faucet plumbing remediation work under the Technical Assistance Program.

**5. What should I do after the plumbing work is completed?** After the kitchen faucet plumbing work is completed, you may contact Aqua at *[insert dedicated CRA phone number]* to request sampling of your House's kitchen cold water tap. Aqua will then arrange for sampling of your House's kitchen cold water tap to occur promptly, but no earlier than seventy-five (75) days after completion of the kitchen faucet plumbing work. If that sample is above 15 parts per billion (ppb) for lead, you would receive free filter devices for that faucet from Aqua until your sampling results do not exceed 15 ppb for two consecutive sampling events, with at least thirty (30) days between each sampling event.

If you have any questions, please call *[insert dedicated CRA phone number]*.

Dated: \_\_\_\_\_

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State's Attorney )  
for Will County, Illinois, )

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

PLAINTIFF'S MOTION FOR APPROVAL AND ENTRY OF CONSENT ORDER

EXHIBIT 2

AGREED ORDER

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> KWAME RAOUL, Attorney General	)	
of the State of Illinois, and	)	
<i>ex rel.</i> JAMES W. GLASGOW,	)	
State's Attorney for Will County, Illinois,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19CH1208
	)	
AQUA ILLINOIS, INC., an Illinois corporation,	)	
	)	
Defendant.	)	

**AGREED ORDER**

This cause coming on to be heard, due notice having been given, the Court being duly advised in the premises, and the Court having contemporaneously entered the Consent Order in this case:

IT IS HEREBY ORDERED THAT:

1. All remaining calendar dates in the case, including the status hearing scheduled on January 5, 2024, are hereby stricken.

ENTERED:

\_\_\_\_\_  
J U D G E  
DATE: \_\_\_\_\_

Order Prepared By:  
Kathryn A. Pamenter (#6231191)  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(773) 590-7824  
[Kathryn.Pamenter@ilag.gov](mailto:Kathryn.Pamenter@ilag.gov)

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 17th day of April, 2025:

I have electronically served true and correct copies of Aqua Illinois, Inc.'s Motion to Dismiss by electronically filing the copies with the Clerk of the Illinois Pollution Control Board and by e-mail upon each person listed in the attached service list.

My e-mail address is Alex.Garel-Frantzen@afslaw.com.

The number of pages in the e-mail transmission is 304.

The e-mail transmission took place before 5:00 p.m.

/s/ Alexander J. Garel-Frantzen

Alexander J. Garel-Frantzen

Dated: April 17, 2025

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