

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>AQUA ILLINOIS, INC.,</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>PCB 2022-___</b>
	)	<b>(Special Exception Permit Appeal)</b>
<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
	)	
Respondent.	)	
	)	

**NOTICE OF FILING**

To: Division of Legal Counsel	Pollution Control Board, Attn: Clerk
Illinois Environmental Protection Agency	100 West Randolph Street
1021 North Grand Avenue East	James R. Thompson Center
P.O. Box 19276	Suite 11-500
Springfield IL 62794-9276	Chicago, Illinois 60601-3218
<a href="mailto:epa.dlc@illinois.gov">epa.dlc@illinois.gov</a>	<a href="mailto:PCB.Clerks@illinois.gov">PCB.Clerks@illinois.gov</a>

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **PETITION FOR REVIEW OF AN ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S SPECIAL EXCEPTION PERMIT DECISION AND MOTION FOR PARTIAL STAY, APPEARANCES OF DANIEL J. DEEB, ALEX GAREL-FRANTZEN, AND SARAH L. LODE**, and **CERTIFICATE OF SERVICE**, copies are which are herewith served upon you.

Dated: July 8, 2022

/s/ Sarah L. Lode  
One of its Attorneys

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Alex Garel-Frantzen  
Sarah L. Lode  
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*Attorneys for Aqua Illinois, Inc.*





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**APPEARANCE OF SARAH L. LODE  
AND CONSENT TO E-MAIL SERVICE**

I, Sarah L. Lode, hereby enter my appearance on behalf of AQUA ILLINOIS, INC. and authorize the service of documents on me by email in lieu of receiving paper documents in the above-captioned proceeding. My email address to receive service is as follows:  
[Sarah.Lode@afslaw.com](mailto:Sarah.Lode@afslaw.com).

\_\_\_\_\_  
*/s/ Sarah L. Lode*  
Sarah L. Lode

Dated: July 8, 2022

Sarah L. Lode  
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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<b>PROTECTION AGENCY,</b>	)	
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Respondent.	)	
	)	

**PETITION FOR REVIEW OF AN ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY’S SPECIAL EXCEPTION PERMIT DECISION AND  
MOTION FOR PARTIAL STAY**

Petitioner Aqua Illinois, Inc. (“Aqua”), pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (the “Act”), 415 Ill. Comp. Stat. 5/40(a)(1), and Sections 105.200 *et seq.* of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code §§ 105.200 *et seq.*, contests the decision of the Illinois Environmental Protection Agency (“IEPA”) on June 29, 2022, to deny Aqua’s request to modify Additional Condition 6 of Public Water Supply Construction Permit No. 0071-FY2022 issued by IEPA on July 30, 2021 (the “2021 Permit”). IEPA’s denial of Aqua’s modification request is stated at the final paragraph of the Special Exception Permit issued by IEPA on June 29, 2022, which is attached as Exhibit A (the “2022 Permit”). As detailed at Part II.A below, the denial was not necessary to accomplish the purpose of the Act or the regulations of the Illinois Pollution Control Board (the “Board”) and was otherwise arbitrary and capricious.

Petitioner also contests Additional Conditions 3, 4, and 5 of the 2022 Permit, each of which is not necessary to accomplish the purpose of the Act or the Board’s regulations and is otherwise

arbitrary and capricious. *See infra* Parts II.B and II.C. As explained at Part III, Petitioner requests that Additional Conditions 3, 4, and 5 of the 2022 Permit be stayed.

In support of this Petition and Motion for Partial Stay, Aqua states as follows:

**I. BACKGROUND**

1. IEPA issues permits to public water systems in Illinois under the authority of the Board's Primary Drinking Water Standards of 35 Ill. Admin. Code Part 611 ("Part 611"). Subpart G of Part 611 contains the Board's Lead and Copper Rule (the "Lead and Copper Rule").

2. Aqua owns and operates the Aqua Illinois-University Park public water system, which serves approximately 7,000 residents through approximately 1,975 connections in the Village of University Park, Illinois (the "UP System").<sup>1</sup>

3. Following a source water switch from groundwater to Kankakee River surface water, the lead action level of 35 Ill. Admin. Code § 611.350(c) (the "Lead Action Level") was exceeded for the UP System for the first six-month compliance period of 2019. Aqua thereafter voluntarily issued a "do not consume" notice and a lead advisory to all Village of University Park ("Village") residents.

4. Aqua subsequently worked extensively with the foremost scientific experts, provided bottled water to Village residents, and completed extraordinary additional compliance sampling (more than 2,100 samples from July 2019 to June 2021 alone).

5. As a result of its extraordinary compliance sampling and work with foremost experts, Aqua sought and obtained the 2021 Permit from IEPA, allowing use of orthophosphate for corrosion control for the UP System. A copy of the 2021 Permit is attached as Exhibit B. As

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<sup>1</sup> The UP System has been designated as water system number IL1975030 by IEPA.

shown by Exhibit B, the 2021 Permit included the following Additional Condition 6, which required Aqua to collect a minimum of 40 compliance samples each month:

Collect between 40 and 60 lead compliance samples from approved individual sample site locations each month beginning 30 days after the issuance of the operating permit for this project. Consideration should be given based upon highest past lead results and geographic representation. Consideration should also be given to sampling when CSMR and nitrate results are the highest for the month, typically following rain events. (Section 18 and 19 of the Act 415 ILCS 5/1 8 & 19, 35 Ill. Adm. Code 602.114, 601.101, 611.352(f) and the Chemical Change Description dated July 15, 2021).

Ex. B, 2021 Permit, at 2.

6. In the event of a Lead Action Level exceedance, the Lead and Copper Rule requires a public water supply the size of the UP System to collect a minimum of 40 samples during each six-month compliance period. *See* 35 Ill. Admin. Code §§ 611.356(c), 611.Table D.

7. The requirement of the 2021 Permit to collect a minimum of 40 samples per month, rather than per six-month compliance period, goes well-beyond the sampling required by 35 Ill. Admin. Code §§ 611.356(c) and 611.Table D.

8. If a public water supply meets the Lead Action Level for two consecutive six-month compliance periods, the public water supply may reduce the frequency of sampling to once per year. *Id.* § 611.356(d)(4).

9. If a public water supply the size of the UP System meets the Lead Action Level for two consecutive six-month compliance periods, it is deemed to have achieved optimal corrosion control. *Id.* § 611.351(b)(1).

10. In addition to the above-described voluntary efforts, in November 2019 Aqua also voluntarily entered into an Agreed Interim Order in a civil action initiated by the Office of the Illinois Attorney General. A complete copy of that Agreed Interim Order is attached as Exhibit C.

11. With respect to compliance sampling frequency, the Agreed Interim Order requires that Aqua collect compliance samples each month “until such time as Aqua receives written approval from [IEPA] that such additional sampling is no longer necessary.” Ex. C, Agreed Interim Order, at 8 ¶ 14.

12. On April 1, 2022, IEPA received requests from Aqua to modify Additional Condition 6 of the 2021 Permit to eliminate the requirement to collect compliance samples every month and instead allow sample collection as required by the Lead and Copper Rule:

Collect between 40 and 60 lead compliance samples from the kitchen tap of compliance pool approved individual sample site locations for the month of March, 2022, as the final month of monthly compliance sampling. Thereafter, the supplier shall be required to collect no fewer than 40 lead compliance samples from compliance pool sample site locations only once in each subsequent six-month compliance sampling period and may then reduce monitoring consistent with Section 35 Ill. Adm. Code 611.356(d)(4). Aerators shall not be cleaned within 96-hours of sample collection.

Aqua Requests (the “Aqua Requests”) at 3, attached as Exhibit D.<sup>2</sup>

13. Via the last paragraph of the 2022 Permit, IEPA denied the Aqua Requests to modify Additional Condition 6 to remove the requirement for monthly compliance monitoring purportedly because the Agreed Interim Order precluded IEPA from doing so:

As the Agreed Interim Order requires monthly monitoring, Aqua’s request to modify additional condition #6 is denied.

Ex. A, 2022 Permit, at 3.

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<sup>2</sup> The Aqua Requests also proposed a new Additional Condition 7, which was also denied by IEPA by way of the last paragraph of the 2022 Permit. Ex. A, 2022 Permit, at 3. Aqua proposed Additional Condition 7 as an extra inducement to encourage IEPA to act favorably on the Aqua Requests. Because proposed Additional Condition 7 was unnecessary and beyond what is required by the Lead and Copper Rule, Aqua does not challenge that aspect of IEPA’s denial.

14. Additional Condition 3 of the 2021 Permit states that “Optimal Water Quality Parameter (OWQP) ranges will be set after the community water supply meets the lead action level in two consecutive six-month monitoring periods.” Ex. B, 2021 Permit, at 1 ¶ 3.

15. In issuing the 2022 Permit, IEPA revised Additional Condition 3 to state that “Optimal Water Quality Parameter (OWQP) ranges will be set after Optimal Corrosion Control Treatment (OCCT) is designated and the community water supply meets the lead action level in two consecutive six-month monitoring periods.” Ex. A, 2022 Permit, at 2 ¶ 3.

16. IEPA explicitly crafted Additional Conditions 4 and 5 of the 2021 Permit to expire once the UP System met the Lead Action Level for two consecutive six-month monitoring periods. *See* Ex. B, 2021 Permit, at 2 ¶¶ 4, 5. More specifically, in relevant part, Additional Conditions 4 and 5 of the 2021 Permit each include the following sentence:

This additional condition expires after the community water supply meets the lead action level in two consecutive six-month monitoring periods.

*Id.*

17. The UP System met the Lead Action Level during the last two consecutive six-month monitoring periods, which respectively ran from July to December 2021 and January to June 2022. *See* attached as Exhibit E.

18. IEPA actually or constructively knew that the UP System had met the Lead Action Level for two consecutive six-month monitoring periods prior to issuing the 2022 Permit.

19. In issuing the 2022 Permit, IEPA replaced the aforementioned sentences of Additional Conditions 4 and 5 of the 2021 with text purporting to delay expiration to an undefined date at which IEPA sets optimal water quality parameter ranges. *See* Ex. A, 2022 Permit, at 2 ¶¶ 4, 5 (“This additional condition expires after the [IEPA] sets OWQP ranges.”).

20. The only stated basis for IEPA's decision to delay expiration of Additional Conditions 4 and 5 is that "[IEPA] has decided to replace all permit conditions to [the 2021 Permit] for clarity and based upon the Lead and Copper Rule steps in the Part 611 regulations." Ex. A, 2022 Permit, at 1.

## II. CHALLENGED IEPA DECISIONS

21. Aqua respectfully challenges IEPA's decisions as outlined by Subparts II.A, B, and C below.

### A. IEPA Improperly Relied on the Interim Agreed Order as the Basis to Deny the Aqua Requests to Eliminate Monthly Monitoring.

22. As its sole basis for denying the Aqua Requests, IEPA erroneously claimed that the Agreed Interim Order requires monthly monitoring and suggested that IEPA was thus somehow precluded from granting the Aqua Requests. *See* Ex. A, 2022 Permit, at 3 ("As the Agreed Interim Order requires monthly monitoring, Aqua's request to modify additional condition #6 is denied.").

23. Nothing in the Interim Agreed Order precludes IEPA from acting favorably upon the Aqua Requests or from applying any criteria to its decision making regarding the UP System other than those of the Lead and Copper Rule. *See generally* Ex. C.

24. IEPA's erroneous basis for denying the Aqua Requests ignores the fact that the Agreed Interim Order expressly provides that monthly sampling is required only until IEPA determines that "such additional sampling is no longer necessary." Ex. C, Agreed Interim Order, at 8 ¶ 14.

25. The Aqua Requests provided substantial and uncontroverted evidence that monthly sampling is no longer necessary. *See* Ex. D. Nothing in the 2022 Permit responds to that evidence. *See* Ex. A.

26. IEPA's denial of the Aqua Requests was not necessary to accomplish the purpose of the Act or the Board's regulations and was otherwise arbitrary and capricious.

27. Accordingly, Aqua requests that the Board remand the 2022 Permit to IEPA and direct IEPA to revise the 2022 Permit to require compliance sampling at the frequencies provided by 35 Ill. Admin. Code § 611.356(c) and (d), and not monthly.

**B. Additional Condition 3 States Improper Requisites to OWQP Ranges.**

28. Additional Condition 3 of the 2022 Permit states that OWQP ranges will be set “after Optimal Corrosion Control Treatment (OCCT) is designated and the community water supply meets the lead action level for two consecutive six-month monitoring periods.” Ex. A, 2022 Permit, at 2 ¶ 3.

29. The UP System met the Lead Action Level for the last two consecutive monitoring periods. *See supra* ¶¶ 16–17; *see also* Ex. E.

30. There is no basis in the Lead and Copper Rule to require “designation” of OCCT as a prerequisite for IEPA's setting of OWQP ranges.

31. The Lead and Copper Rule does not use the term “designated” for OCCT.

32. By meeting the Lead Action Level for the last two consecutive six-month compliance periods, the UP System is deemed to have achieved optimal corrosion control under 35 Ill. Admin. Code § 611.351(b)(1).

33. IEPA's prerequisite of OCCT designation in Additional Condition 3 was not necessary to accomplish the purpose of the Act or the Board's regulations and was otherwise arbitrary and capricious.

34. Accordingly, Aqua requests that the Board remand the 2022 Permit to IEPA to require IEPA to set OWQP ranges.

**C. IEPA Improperly Extended Additional Conditions 4 and 5.**

35. Additional Conditions 4 and 5 of the 2021 Permit imposed significant monitoring requirements upon the UP System beyond what is required of other public water systems in Illinois by the Lead and Copper Rule. *See* Ex. B, 2021 Permit, at 2 ¶¶ 4, 5.

36. Additional Conditions 4 and 5 of the 2021 Permit were each expressly stated to expire once “the community water supply meets the lead action level in two consecutive six-month monitoring periods.” *Id.*

37. The UP System met the Lead Action Level for the six month period running from July 1, 2021 through December 31, 2021. *See* Ex. E at 7.

38. The UP System also met the Lead Action Level for the immediately following consecutive six-month monitoring period which ran from January 1, 2022, through June 30, 2022. *See id.* at 1–5. IEPA was made aware that the Lead Action Level was met for two consecutive six-month monitoring periods by, at the latest, June 20, 2022.

39. In issuing the 2022 Permit, IEPA restated Additional Conditions 4 and 5 to (a) continue to impose system monitoring requirements beyond what is required by the Lead and Copper Rule and (b) endure until after IEPA “sets OWQP ranges” regardless of the fact that the UP Water System met the Lead Action Level for two consecutive six-month monitoring periods. *See* Ex. A, 2022 Permit, at 2 ¶¶ 4, 5.

40. The only stated basis for Additional Conditions 4 and 5 in the 2022 Permit is that “[IEPA] has decided to replace all permit conditions to [the 2021 Permit] for clarity and based upon the Lead and Copper Rule steps in the Part 611 regulations.” *See id.*, 2022 Permit, at 1.

41. Nothing in the Lead and Copper Rule requires the additional system monitoring required by Additional Conditions 4 and 5.

42. Nothing in the Lead and Copper Rule requires that IEPA set OWQP ranges as a prerequisite for the termination of the additional system sampling required by Additional Conditions 4 and 5.

43. IEPA's issuance of Additional Conditions 4 and 5 was not necessary to accomplish the purpose of the Act or the Board's regulations and was otherwise arbitrary and capricious.

44. Accordingly, Aqua requests that the Board remand the 2022 Permit to IEPA to require IEPA to omit from the 2022 Permit system monitoring activities that are not required by the Lead and Copper Rule.

### **III. MOTION FOR PARTIAL STAY**

45. Aqua asks the Board to stay the effectiveness of Additional Conditions 3, 4, and 5 of the 2022 Permit from June 29, 2022 (the date of the 2022 Permit) until the later of (a) the Board's final resolution of this Petition, or (b) if this Petition is granted, IEPA's issuance of a corrected permit.

46. Once appealed to the Board, a permit applicant may seek to have the permit stayed in its entirety, *see Borg-Warner Corp. v. Mauzy*, 427 N.E.2d 415, 421 (Ill. App. 3d 1981), or may seek a discretionary stay of only the contested conditions, allowing the remaining sections of the new permit to remain in effect. *See e.g.*, PCB 2016-060, *Ill. Power Generating Co. v. IEPA* ("IPGC v. IEPA"), Order (Dec. 17, 2015); PCB 2012-101, *ConocoPhillips Co. v. IEPA*, Order (Apr. 5, 2012). In this instance, Aqua has no objection to Additional Conditions 1 and 2 and seeks to stay only the Additional Conditions 3, 4, and 5. During the stay, the 2022 Permit and all its remaining conditions, other than the stayed conditions, will remain in effect.

47. In *IPGC v. IEPA*, the Board stated that it “has long recognized that Illinois law provides standards to help determine whether it is appropriate to grant a discretionary stay.” *IPGC v. IEPA*, Order at 2 (Dec. 17, 2015). The four factors to be evaluated are as follows:

- a. “a certain and clearly ascertainable right needs protection;”
- b. “irreparable injury will occur without the [stay];”
- c. “no adequate remedy at law exists; and”
- d. “there is a probability of success on the merits.”

*Id.* (citing PCB 2001-048, PCB 2001-049 (consol.), *Community Landfill Co. and City of Morris v. IEPA*, Order at 4 (Oct. 19, 2000)) (citing PCB 1989-116, *Motor Oils Refining Co. v. IEPA*, Order at 2 (Aug. 31, 1989)). Though these factors are helpful in determining whether a partial, discretionary stay is appropriate, the Board need not “consider each of the[] factors in making its determination.” *Id.* (citing PCB 2002-031, *Bridgestone/Firestone Off Road Tire Co. v. IEPA*, Order at 3 (Nov. 1, 2001)). The Board has noted that of the four factors, “the likelihood of environmental harm should a stay be granted is of particular concern for the Board.” *Id.* (citing PCB 1989-116, Order at 2 (Aug. 31, 1989)).

48. The Board has granted discretionary stays in a number of cases. PCB 2016-060, Order (Dec. 17, 2015) (NPDES Permit Appeal); PCB 2013-049, *AkzoNobel Surface Chemistry, LLC v. IEPA*, Order (Apr. 18, 2013) (NPDES Permit Appeal); PCB 2010-053, *Dynegy Midwest Generation, Inc. v. IEPA*, Order (Feb. 3, 2010) (NPDES Permit Appeal); PCB 2010-030, *ExxonMobil Oil Corp. v. IEPA*, Order (Dec. 17, 2009) (NPDES Permit Appeal); PCB 2007-010, *Citgo Petroleum Corp. v. IEPA*, Order (Sept. 21, 2006) (NPDES Permit Appeal).

49. Here, a stay of Additional Conditions 3, 4, and 5 of the 2022 Permit should be granted. First, Petitioner has an ascertainable right that needs protection because a stay is necessary to protect Aqua’s right to appeal and to prevent the imposition of unlawful, arbitrary,

and capricious conditions before Aqua is able to exercise its right to appeal and be heard by the Board.

50. Second, Aqua will suffer irreparable injury if Additional Conditions 3, 4, and 5 of the 2022 Permit are applied. Compliance would require Aqua to continue costly additional monitoring and reporting activities well beyond what is required by the Lead and Copper Rule. Moreover, these conditions would require Aqua to unnecessarily continue to devote significant resources which could best be used elsewhere to improve other aspects of the UP System. If Aqua complied with these requirements and then succeeded on the merits of this Petition, the additional costs and significant resources would be lost. Thus, Aqua would suffer irreparable injury.

51. Third, Aqua has no other adequate remedy at law to prevent these injuries or to contest these requirements; a permit appeal is the only remedy available.

52. Fourth, it is likely Aqua will succeed on the merits of this Petition. Aqua can demonstrate that Additional Conditions 3, 4, and 5 are beyond what is required by the Lead and Copper Rule.

53. Finally, no harm to human health or the environment will result from staying these requirements. Aqua will continue to operate the UP System in compliance with the Lead and Copper Rule and with the remaining conditions of the 2022 Permit.

54. Aqua requests a prompt hearing before the Board if IEPA opposes this request for a partial stay.

55. Also, as the Board has previously noted regarding discretionary stays:

[T]he Board has tended to grant parties the relief they request. The Board believes that, in some cases, a permittee may find it advantageous to operate under most of the terms of a renewed permit, rather than under the terms of the old one. The Board finds nothing in the Act or [Administrative Procedure Act (“APA”)] that prevents a permittee from electing *not* to avail itself of the APA stay. In such

situations, the permittee then would be operating under the terms of the most-recently issued permit, as to all but the conditions explicitly stayed by Board order.

PCB 2006-067, *AmerenEnergy Generating Co. v. IEPA*, Order at 7 n.1 (Feb. 16, 2006).

WHEREFORE, Aqua Illinois, Inc. respectfully moves the Board to grant a stay of effectiveness of Additional Conditions 3, 4, and 5 of the 2022 Permit from June 29, 2022, until the later of (a) the Board's final resolution of this Petition, or (b) if this Petition is granted, IEPA's issuance of a corrected permit. During the stay, Aqua will operate in accordance with the remaining and effective terms and conditions of the 2022 Permit. Moreover, Aqua Illinois, Inc. respectfully requests that the Board grant review of IEPA's issuance of the 2022 Permit as set forth above and further remand the 2022 Permit to IEPA for reissuance consistent with the law and Aqua Illinois, Inc.'s requests as set forth above.

Respectfully submitted,

Aqua Illinois, Inc.

Dated: July 8, 2022

/s/ Daniel J. Deeb  
One of its Attorneys

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*Attorneys for Aqua Illinois, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 8th day of July, 2022:

I have electronically served a true and correct copy of Petition for Review of an Illinois Environmental Protection Agency's Special Exception Permit Decision and Motion for Partial Stay and Appearances of Daniel J. Deeb, Alex Garel-Frantzen, and Sarah L. Lode, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

Division of Legal Counsel  
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1021 North Grand Avenue East  
P.O. Box 19276  
Springfield IL 62794-9276  
epa.dlc@illinois.gov

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218  
PCB.Clerks@illinois.gov

My e-mail address is [Sarah.Lode@afslaw.com](mailto:Sarah.Lode@afslaw.com).

The number of pages in the e-mail transmission is 67.

The e-mail transmission took place before 5:00 p.m.

          /s/ Sarah L. Lode            
Sarah L. Lode

Dated: July 8, 2022

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Respondent.	)	
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**INDEX OF EXHIBITS FOR AQUA ILLINOIS, INC.'S  
PETITION FOR REVIEW**

- Exhibit A Aqua IL University Park (IL1975030) Special Exception Permit (June 29, 2022)
- Exhibit B Aqua IL – University Park (IL1975030) Public Water Supply Construction Permit, Permit No. 0071-FY2022 (July 30, 2021)
- Exhibit C Agreed Interim Order No. 19 CH 1208 (Nov. 1, 2019)
- Exhibit D Letter from Aqua Illinois, Inc. to the Illinois Environmental Protection Agency Requesting Supplemental Permit (Mar. 24, 2022)
- Exhibit E Evidence of Aqua Illinois, Inc. University Park’s Achievement of Illinois’s Lead Action Level for the Last Two Consecutive Six-Month Monitoring Periods

# **EXHIBIT A**



217/782-1724

SPECIAL EXCEPTION PERMIT

June 29, 2022

Ms. Melissa Kahoun  
Environmental Compliance Manager  
Aqua Illinois Water Company  
1000 South Schuyler Avenue  
Kankakee, IL 60901

Re: Aqua IL University Park (IL1975030)  
Request to Modify Permit Conditions for 0071-FY2022

Dear Ms. Kahoun:

The Illinois Environmental Protection Agency (Agency) has reviewed Aqua's two letters. The request in both letters was to modify additional condition #6 on Construction Permit 0071-FY2022 and to add a new additional condition #7. The March 24, 2022 letter was a request for supplemental permit and was received on March 31, 2022. The March 28, 2022 letter was a request for a special exception permit and was received on April 1, 2022. Both letters were reviewed together and logged into Permit Tracking using log number 2022-1072.

The letters were reviewed along with the data received from the additional conditions in construction permit 0071-FY2022. Pursuant to 35 Ill. Adm. Code 602.600 the Agency has decided to replace all the permit conditions to construction permit 0071-FY2022 for clarity and based upon the Lead and Copper Rule steps in the Part 611 regulations.

The conditions below supersede and replace the additional conditions in Construction Permit 0071-FY2022. The conditions are in the same order as the construction permit for clarity. Significant additions from the language in the construction permit are underlined.

ADDITIONAL CONDITIONS:

1. An operating permit was required prior to feeding zinc orthophosphate. The operating permit for permit number 0071-FY2022 was issued on August 3, 2021. This Special Exception Permit replaces the additional conditions in construction permit 0071-FY2022.

2. The zinc orthophosphate product must be NSF/ANSI 60 approved and contain a 1:10 Zn to PO<sub>4</sub> ratio. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.114, 604.105(g) and Chemical Change Description dated July 15, 2021.)

3. Optimal Water Quality Parameter (OWQP) ranges will be set after Optimal Corrosion Control Treatment (OCCT) is designated and the community water supply meets the lead action level in two consecutive six-month monitoring periods. The orthophosphate dose and residual shall be a minimum of 3 mg/L as PO<sub>4</sub>. The pH range shall be 7.4 to 8.0 at the Central Avenue Booster Station. The zinc range shall be 0.3 - 0.5 mg/L. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.114, 611.351(e) and the Chemical Change Description dated July 15, 2021)

4. Water quality monitoring must be conducted for the Aqua Illinois - University Park community water supply as described below and results submitted for each month to david.cook@illinois.gov within 10 days after the last day of the month. The submissions must include all water quality parameter monitoring done during the month including any monitoring not mentioned here.

The revised water quality monitoring requirements include daily monitoring for flow and orthophosphate at the Central Avenue Booster Pump Station, weekly monitoring for pH and nitrate at the Central Avenue Booster Pump Station, and quarterly monitoring at three locations for free chlorine, total chlorine, monochloramine, free ammonia, orthophosphate, pH, and alkalinity. In addition, quarterly monitoring at three locations is required for chloride, sulfate, CSMR (calculated value), nitrite, nitrate, iron, manganese, and zinc. Quarterly monitoring at one location is required for Total Organic Carbon (TOC).

Any water quality parameter monitoring conducted must be reported in a spreadsheet. The data are needed to set Optimal Water Quality Parameter (OWQP) ranges. This additional condition expires after the Agency sets OWQP ranges. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, 604.140, 611.352(a), 611.352(f), the Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Supplies, USEPA March 2016 (Updated), and the Chemical Change Description dated July 15, 2021)

5. Nitrate water quality monitoring must be conducted for the Aqua Illinois - Kankakee entry point to the distribution system on a weekly basis and results submitted to david.cook@illinois.gov within 10 days after the last day of the month. The nitrate water quality results must be reported in a spreadsheet. This additional condition expires after the Agency sets OWQP ranges. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, and 611.352(f))

Request to Modify Permit Conditions for 0071-FY2022

Special Exception Permit

Page 3

6. Additional condition #6 of construction permit 0071-FY2022 is terminated by this Special Exception Permit as it is duplicative to the lead compliance monitoring requirement in the Agreed Interim Order. The elimination of this condition does not eliminate the monthly lead compliance monitoring that is required pursuant to the Agreed Interim Order. (People of the State of Illinois, No. 19 CH 1208, November 1, 2019)

As the Agreed Interim Order requires monthly monitoring, Aqua's request to modify additional condition #6 is denied. The request to add a new additional condition #7 is denied, since it is moot based upon Agreed Interim Order that continues to require monthly lead compliance monitoring.

Sincerely,



David C. Cook, P.E.  
Manager, Permit Section  
Division of Public Water Supplies

cc: Donald Denault, Certified Operator  
Elgin Regional Office  
DPWS/CAS

# **EXHIBIT B**

1021 North Grand Avenue, East; Post Office Box 19276; Springfield, IL 62794-9276

Division of Public Water Supplies

Telephone 217/782-1724

**PUBLIC WATER SUPPLY CONSTRUCTION PERMIT**

SUBJECT: AQUA IL – UNIVERSITY PARK (IL1975030)

Permit Issued to:  
Aqua Illinois  
1000 S. Schuyler  
Kankakee, IL 60901

PERMIT NUMBER: 0071-FY2022

DATE ISSUED: July 30, 2021

PERMIT TYPE: Plant Improvement

The issuance of this permit is based on the Application for Construction Permit and supporting documents prepared by the engineers/architects indicated and are identified in the ADDITIONAL CONDITIONS. This permit is issued for the construction and/or installation of the public water supply improvements described, in accordance with the provisions of the "Environmental Protection Act (Act)", Title IV, Sections 14 through 17, and Title X, Sections 39 and 40, and is subject to the conditions printed on the last page of this permit and the ADDITIONAL CONDITIONS listed below.

FIRM: Cornwell Engineering Group  
NUMBER OF PLAN SHEETS: na  
TITLE OF PLANS: "University Park Booster Station – Chemical Feed Change"

PROPOSED IMPROVEMENTS:

\*\*\*Switch to a zinc orthophosphate corrosion control chemical\*\*\*

ADDITIONAL CONDITIONS:

1. An operating permit is required before feeding zinc orthophosphate. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.300) The issuance of an operating permit 0071-FY2022 for zinc orthophosphate replaces the additional conditions in construction permit 1020-FY2020.
2. The product must be NSF/ANSI 60 approved and contain a 1:10 Zn to PO<sub>4</sub> ratio. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.114, 604.105(g) and Chemical Change Description dated July 15, 2021)
3. Optimal Water Quality Parameter (OWQP) ranges will be set after the community water supply meets the lead action level in two consecutive six-month monitoring periods. The orthophosphate dose and residual shall be a minimum of 3 mg/L as PO<sub>4</sub>. The pH range shall be 7.4 to 8.0 at the Central Avenue Booster Station. The zinc range shall be 0.3 - 0.4 mg/L. Notify the Division of Public Water Supplies, Permit Section staff if results are outside of these ranges in two consecutive weeks of water quality monitoring. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.114, 611.351(e) and the Chemical Change Description dated July 15, 2021)

Aqua IL University Park, IL1975030

University Park Booster Station - Chemical Feed Change

Permit no. 0071-FY2022

July 30, 2021

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4. Water quality monitoring must be conducted for the Aqua Illinois - University Park community water supply as described below and results submitted for each month to david.cook@illinois.gov within 10 days after the last day of the month. The submissions must include all water quality parameter monitoring done during the month including any monitoring not mentioned here.

The minimum water quality monitoring parameters, locations, and frequencies are as described in the Chemical Change Description dated July 15, 2021. The Chemical Change Description includes daily monitoring for flow and orthophosphate at the Central Avenue Booster Pump Station and weekly monitoring at nine locations for free chlorine, total chlorine, monochloramine, free ammonia, orthophosphate, pH, and alkalinity. In addition, weekly monitoring at nine locations is required for chloride, sulfate, CSMR (calculated value), nitrite, nitrate, iron, manganese, zinc, and Total Organic Carbon (TOC).

Any water quality parameter monitoring conducted must be reported in a spreadsheet. The data are needed to set Optimal Water Quality Parameter (OWQP) ranges. This additional condition expires after the community water supply meets the lead action level in two consecutive six-month monitoring periods. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, 604.140, 611.352(f) and the Chemical Change Description dated July 15, 2021)

5. Water quality monitoring must be conducted for the Aqua Illinois - Kankakee entry point to the distribution system as described below and results submitted to david.cook@illinois.gov within 10 days after the last day of the month. The submissions shall be limited to these parameters at this location: pH, alkalinity, chloride, sulfate, CSMR (calculated), nitrite, nitrate, and TOC. The specified water quality parameters that are monitored must be reported in a spreadsheet. This additional condition expires after the community water supply meets the lead action level in two consecutive six-month monitoring periods. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114 and 611.352(f))

6. Collect between 40 and 60 lead compliance samples from approved individual sample site locations each month beginning 30 days after the issuance of the operating permit for this project. Consideration should be given based upon highest past lead results and geographic representation. Consideration should also be given to sampling when CSMR and nitrate results are the highest for the month, typically following rain events. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, 601.101, 611.352(f) and the Chemical Change Description dated July 15, 2021)

Aqua IL University Park, IL1975030

University Park Booster Station - Chemical Feed Change

Permit no. 0071-FY2022

July 30, 2021

Page 3

7. The permit approval is for the Application, Schedule D, and the Chemical Change Description sealed by David Cornwell, PhD, P.E. that were received on July 16, 2021. The Aqua University Park Technical Response Team PowerPoint® presentation dated July 14, 2021 and the University Park Nitrate Experiments presentation dated July 14, 2021 were also reviewed.

cc: Cornwell Engineering Group  
DPWS/FOS – Elgin Regional Office  
DWPC/Permit Section  
DWPC/Standards Section



---

David C. Cook, P.E.  
Manager, Permit Section  
Division of Public Water Supplies

The Illinois Environmental Protection Agency Act (415 ILCS 5/39) grants the Environmental Protection Agency authority to impose conditions on permits which it issues.

These standard conditions shall apply to all permits which the Agency issues for construction or development projects which require permits under the Division of Water Pollution Control, Air Pollution Control, Public Water Supplies and Land Pollution Control. Special conditions may also be imposed by the separate divisions in addition to these standard conditions.

1. Unless this permit has been extended or it has been voided by a newly issued permit, this permit will expire one year after this date of issuance unless construction or development on this project has started on or prior to that date.
2. The construction or development of facilities covered by this permit shall be done in compliance with applicable provisions of Federal laws and regulations, the Illinois Environmental Protection Act, and Rules and Regulations adopted the Illinois Pollution Control Board.
3. There shall be no deviations from the approved plans and specifications unless a written request for modification of the project, along with plans and specifications as required, shall have been submitted to the Agency and a supplemental written permit issued.
4. The permittee shall allow any agent duly authorized by the Agency upon the presentation of credentials:
  - a. to enter at reasonable times the permittee's premises where actual or potential effluent, emission or noise sources are located or where any activity is to be conducted pursuant to this permit.
  - b. to have access to and copy at reasonable times any records required be kept under the terms and conditions of this permit.
  - c. to inspect at reasonable times, including during any hours or operation of equipment constructed or operated under this permit, such equipment or monitoring methodology or equipment required to be kept, used, operated, calibrated and maintained under this permit.
  - d. to obtain and remove at reasonable times samples of any discharge or emission of pollutants.
  - e. to enter at reasonable times and utilize any photographic, recording, testing, monitoring or other equipment for the purpose of preserving, testing, monitoring, or recording any activity, discharge, or emission authorized by this permit.
5. The issuance of this permit:
  - a. shall not be considered as in any manner affecting the title of the permits upon which the permitted facilities are to be located;
  - b. does not release the permittee from any liability for damage to person or property caused by or resulting from the construction, maintenance, or operation of the proposed facilities;
  - c. does not release the permittee from compliance with the other applicable statues and regulations of the United States, of the State of Illinois, or with applicable local laws, ordinances and regulations;
  - d. does not take into consideration or attest to the structural stability of any units or parts of the project;
  - e. in no manner implies or suggests that the Agency (or its officers, agents or employees) assumes any liability directly or indirectly for any loss due to damage, installation, maintenance, or operation of the proposed equipment or facility.
6. These standard conditions shall prevail unless modified by special conditions.
7. The Agency may file a complaint with the Board for modification, suspension or revocation of a permit:
  - a. upon discovery that the permit application misrepresentation or false statements or that all relevant facts were not disclosed; or
  - b. upon finding that any standard or special conditions have been violated; or
  - c. upon any violation of the Environmental Protection Act or any Rules or Regulation effective thereunder as a result of the construction or development authorized by this permit.

1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

**Division of Public Water Supplies, Permit Section**  
**Application for Operating Permit**

*This form may be completed online, a copy saved locally and printed before it is signed. You may also complete a printed copy manually. Submit the completed and signed form to the Illinois EPA, Division of Public Water Supplies, Permit Section at the address listed above.*

Facility Name: Aqua Illinois - University Park Facility ID: IL1975030  
Address 1: 1000 S. Schuyler Construction Permit No.: 0071-FY2022  
Address 2: \_\_\_\_\_ Permit Type: Plant Improvement  
City: Kankakee State: IL Zip Code: 60901 Date Permit Issued: July 30, 2021  
County: Will  
Project Title: University Park Booster Station - Chemical Feed Change  
Firm Name: Cornwell Engineering Group

Project Status:  Final  
 Partial  
\_\_\_\_\_ Partial A, B, C, etc.

**Application Requirements (check when complete):**  
 Permit Number, Facility Number, and Facility Name identified on the Lab Report(s).  
 Sample results attached to the Application.  
(If a new well was constructed, provide a copy of the sample results as required by Section II, Part g of the C-I application).

**If you select Partial, you must also submit the following items:**  
 Cover letter describing which sections were completed.  
 General project layout plans.  
 For water main projects, identify the length the Partial: \_\_\_\_\_ LF

Date of Project Completion: \_\_\_\_\_ (Provide the date construction was completed on the project or partial)

**Certified Operator in Responsible Charge:**

Name: \_\_\_\_\_ Classification: \_\_\_\_\_ Number: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email (optional): \_\_\_\_\_

**Owner of the Completed Project:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

The Owner hereby certifies that the project named and described has been constructed in accordance with plans and specifications approved by the Illinois EPA. See instructions for further information. For Verbal Approvals, please call 217-782-1724.

\_\_\_\_\_  
Owner/Authorized Personnel Signature Date

**Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent offense after conviction is a Class 3 felony. (415 ILCS 5/44(h))**

**FOR IEPA USE ONLY**

This operating permit 0071-FY2022 issued on \_\_\_\_\_ is valid until revoked.  
This permit is valid only for the work completed under the Construction Permit of the same number.

\_\_\_\_\_  
David C. Cook, P.E.  
Manager, Permit Section  
Division of Public Water Supplies

The Operating Permit Application must be submitted for all Public Water Supply projects that required a construction permit. The Operating Permit *must* be obtained before the project is placed in service.

Fill out the top section using the corresponding Construction Permit for reference.

- **Facility Name** is the name of the village, city or entity distributing community water supplies.
- **Facility ID Number** can be found on the Construction Permit. This number is specific to your facility.
- **Address** is the same as the address on the Construction Permit.
- **Construction Permit Number** is the assigned permit number of the corresponding Construction Permit. The Operating Permit and the corresponding Construction Permit will have the same permit number.
- **Permit Type** identifies whether the project involved is a Water Main, a Plant Improvement or Both.
- **Date Permit Issued** is the date the Construction Permit was granted.
- **Date of Project Completion** is the date construction was completed for the section of project you are requesting the Operating Permit for. If you are requesting an Operating Permit for a Partial project, the Date of Project Completion is the date construction was completed on that partial section. The Date of Project Completion will never be a date in the future, and must be a date *after* the issue date of the Construction Permit.
- **Title of Project** is the same title of project listed on the corresponding Construction Permit. The Operating Permit and the Construction Permit will have the same Title of Project.
- **Firm Name** is the engineering entity that designed the project.

**Project Status** will either be Final or Partial.

- **Final:** If construction on the project is complete, you will select **Final**.
- **Partial:** If construction on the total project is only *partially* complete, but you want to operate the completed section, you will select **Partial**. If this is the first partial, you will identify it as "Partial A", if this is the second partial, you will identify it as "Partial B" and so forth. Once the last partial section has been completed, identify it as such and also select Final in the Project Status.

The **Certified Operator in Responsible Charge** and **Owner of the Completed Project** should fill out his/her respective section. Please print your name legibly and sign where appropriate. By signing the application, the owner hereby certifies that the project named and described has been constructed in accordance with plans and specifications approved by the Illinois EPA, including specifications for bacteriological samples, and that bacteriological samples (if required) were taken under the supervision of a representative from the Public Water Supply. The owner also certifies that the project will be operated in accordance with the provisions of the Illinois Environmental Protection Act and the Rules and Regulations adopted by the Illinois Pollution Control Board pursuant to provisions of the Act.

Requests for **Verbal Approval** and questions can be addressed at (217) 782-1724.

Disinfection and bacteriological analysis must be performed for the completed project in accordance with the requirements of AWWA C651, C652, C653 or C654. For projects requiring these procedures, the sample results must be attached to the application. The construction permit number should be clearly visible on the sample results. Samples are to be taken every 1,200 feet of new water main unless otherwise approved by the Illinois EPA. Samples must be measured using the Membrane Filter technique. Colilert/Colisure will not be accepted for new construction projects.

This form may be completed online, a copy saved locally and printed before it is signed. You may also complete a printed copy manually. Submit the completed form to the Illinois EPA, Bureau of Water, Permit Section at the following address:

**Illinois Environmental Protection Agency  
Division of Public Water Supplies, Permit Section #13  
1021 North Grand Avenue East, PO Box 19276  
Springfield, IL 62794-9276**

# **EXHIBIT C**

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.	)	

**AGREED INTERIM ORDER**

This cause coming before the Court on Plaintiff's Motion to Approve the Agreed Interim Order (the "Motion"), due notice having been given, the Court having jurisdiction over Plaintiff People of the State of Illinois ("Plaintiff") and Defendant Aqua Illinois, Inc. ("Aqua" and together with Plaintiff, the "Parties") and the subject matter herein, the Parties being represented in open court or having waived appearance, the Court having reviewed the Complaint for Injunctive Relief and Civil Penalties ("Complaint") and the Motion, and the Court otherwise being fully advised in the premises;

**THE COURT HEREBY FINDS THAT:**

1. 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 ("Site").
2. Aqua owns and operates the Village of University Park's ("Village") public water system ("Public Water System"), 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.

3. In late May 2019, Aqua conducted the six-month required compliance sampling event on homes within the Village that utilize Aqua's Public Water System ("May 2019 Testing").

4. On August 16, 2019, the Illinois Attorney General's Office and the Will County State's Attorney's Office, on their own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), filed the Complaint in this case against Aqua, alleging (a) Failure to Provide Assuredly Safe Water in violation of Section 18(a)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Illinois Pollution Control Board Public Water Supplies Regulations ("Board PWS Regulations"), 35 Ill. Adm. Code 601.101; (b) Violation of Drinking Water Monitoring Site Plan 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); (c) Violation of Construction Permit Requirements pursuant to 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; (d) 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; and (e) common law public nuisance.

5. Aqua has agreed to the entry of this Agreed Interim Order ("Order").

**THEREFORE, IT IS HEREBY ORDERED THAT:**

**I. GENERAL PROVISIONS**

1. The Court enters this Agreed Interim Order pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2018), which shall remain in effect until further order of this Court.

2. This Order is not a final resolution of the merits of the Plaintiff's Complaint, but rather addresses the Plaintiff's most immediate concerns regarding the allegations in the Complaint.

3. By entering into this Order and complying with its terms, Aqua does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Order and compliance therewith shall not be interpreted as including such admission.

## II. INTERIM INJUNCTIVE RELIEF

### A. **Requirements for Provision of Alternative Sources of Water.**

1. 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 residents of the Village of University Park ("Village"). Pursuant to this notice, Village residents were instructed not to consume water from their tap until the notice was lifted. On or about July 29, 2019, Aqua, on its own, lifted the "do not consume" notice and replaced it with a lead advisory. Since on or about June 15, 2019, Aqua has been providing alternative sources of drinking water, including bottled water, faucet filters certified by NSF/ANSI Standards 42 and 53, pitcher filters certified by NSF/ANSI Standards 42 and 53 (including replacement cartridges and filters), free of charge to customers of the Public Water System. Commencing upon the entry of this Order and subject to Paragraph 3 below, Aqua shall continue to provide customers of the Public Water System, free of charge, alternative sources of drinking water, including bottled water, faucet filters certified by NSF/ANSI Standards 42 and 53, pitcher filters certified by NSF/ANSI Standards 42 and 53 (including replacement cartridges and filters), and such other alternative sources of water as may be approved by the Illinois Attorney General's Office, the Will County State's Attorney's Office and the Illinois EPA (collectively, the "State") in writing (together, "Alternative Sources of Water").

2. Within fourteen (14) days of the date of the entry of this Order, Aqua shall submit to the State a narrative description of the procedure that Aqua utilized to provide Alternative Sources of Water to customers of the Public Water System prior to the entry of this Order.

3. Within fourteen (14) days of the date of the entry of this Order, Aqua shall submit to the State, for its review and comment, if any, a written plan that includes (a) the proposed residential and business customers to continue receiving Alternative Sources of Water, (b) how Aqua intends to provide the Alternative Sources of Water, (c) any changes in the types of Alternative Sources of Water to be provided to such customers from those provided prior to the entry of this Order, and (d) Aqua's procedures to educate, and be available to provide assistance to, customers regarding the timely replacement of cartridges and filters ("Alternative Water Source Plan"). Upon incorporation of all of the State's comments on the Alternative Water Source Plan, Aqua shall implement such Plan until the earlier to occur of (i) such time as the State notifies Aqua in writing otherwise or (ii) further order of this Court.

4. Commencing upon the entry of this Order, Aqua shall collect and record information related to its future distribution of the Alternative Sources of Water to customers of the Public Water System (the "Alternative Sources of Water Log"). The Alternative Sources of Water Log shall include, at a minimum:

- a. The locations where Alternate Sources of Water are being and will be supplied;
- b. The types of Alternate Sources of Water that are being and will be supplied to each location (i.e., bottled, faucet filter, or pitcher filter); and
- c. The date(s) of each instance when an Alternate Source of Water is and will be provided.

The Alternative Sources of Water Log shall be made available to the State for inspection, upon request. Aqua shall maintain the Alternative Sources of Water Log until the earlier to occur of (a) such time as the State notifies Aqua in writing otherwise or (b) further order of this Court.

**B. Aqua's Lead Advisory.**

5. Commencing upon the entry of this Order and continuing until the earlier to occur of (a) the State's written authorization otherwise or (b) further order of this Court, Aqua shall not remove any residential or business customer from the lead advisory without the State's prior written authorization.

**C. Corrosion Control Treatment Requirements.**

6. On or about June 15, 2019, Aqua, after notification to Illinois EPA, changed the phosphate blend utilized to provide corrosion control treatment for the Public Water System in an effort to reestablish protective scaling on the plumbing and pipes. Within seven (7) days of the date of the entry of this Order, Aqua shall submit a written report to the State, pursuant to the Submittals Procedures set forth in Section IV herein, on the status of the corrosion control studies that Aqua has been conducting to identify the optimal corrosion control treatment for the Public Water System. Such written report must also identify how Aqua has satisfied the requirements of Section 611.352(c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.352(c), in conducting the studies.

7. As expeditiously as possible, but in no event later than November 30, 2019, and consistent with the requirements of Section 611.352(c) of the Board PWS Regulations, 35 Ill. Adm. Code 611.352(c), Aqua shall: (a) complete the comprehensive corrosion control treatment studies; and (b) submit to Illinois EPA, for its review and approval in accordance with Paragraph C.9. below, a written corrosion control treatment recommendation that constitutes optimal corrosion control for the Public Water System (the "Corrosion Control

Recommendation”). The Corrosion Control Recommendation shall include a proposed schedule for implementation.

8. Illinois EPA shall use its best efforts to review the Corrosion Control Recommendation as expeditiously as possible. Upon its completion of its review of the Corrosion Control Recommendation, Illinois EPA shall, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

a. If Illinois EPA approves the submission, (i) Aqua shall take all actions required by the submission in accordance with the Illinois EPA-approved schedule and requirements of such submission.

b. If Illinois EPA conditionally approves, or approves only part of, any submission, Aqua shall, upon written direction from Illinois EPA, implement all approved actions of the submission that Illinois EPA determines are technically severable from any disapproved portions of the submission.

c. If Illinois EPA disapproves the submission, in whole or in part, Aqua shall, within thirty (30) days of the date of disapproval or such other time as Illinois EPA agrees in writing, correct all of the deficiencies and resubmit the revised Corrosion Control Recommendation, for Illinois EPA’s review and approval in accordance with this Paragraph C.9. If the resubmission is approved in whole or in part, Aqua shall comply with Paragraph C.9..a. and b. herein, as applicable.

d. If a resubmission is disapproved, in whole or in part, Illinois EPA may require Aqua to correct any deficiencies in accordance with the preceding subparagraphs, or Aqua may invoke the Dispute Resolution procedures set forth in Section VIII.

9. Within thirty (30) days of the date of Illinois EPA's written approval of the Corrosion Control Recommendation, Aqua shall submit to Illinois EPA any permit applications that may be necessary to implement the construction and operation of the Corrosion Control Recommendation.

10. Following Illinois EPA's issuance of all necessary permits or approval of Aqua's Corrosion Control Recommendation if no additional permits are necessary, as applicable, Aqua shall implement the Illinois EPA-approved Corrosion Control Recommendation in accordance with the Illinois EPA-approved schedule for implementation.

**D. Response Team Participation.**

11. As a result of the elevated lead levels found during the May 2019 Testing, a response team was created, including Aqua, Illinois EPA, the United States Environmental Protection Agency ("USEPA") Region V, USEPA Office of Research and Development, and industry experts (collectively, the "Response Team"). Among other things, the Response Team was developed to provide direction and recommendations to Aqua as it responds to elevated levels of lead in the Village's drinking water. Upon entry of this Order, Aqua shall continue, in good faith, to participate in, and coordinate with, the Response Team, including but not limited to funding the necessary studies being conducted by industry experts to identify the optimal corrosion control treatment for the Public Water System discussed in Paragraph C above.

**E. No Modification of Corrosion Control Treatment without Prior Authorization of Illinois EPA.**

12. Effective immediately upon entry of this Order, Aqua agrees that it 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.

**F. Requirements for Compliance Sampling**

13. Beginning on or about June 14, 2019, Aqua conducted weekly water sampling consistent with the sampling procedures set forth in Section 611.356 of the Board PWS Regulations, 35 Ill. Adm. Code 611.356. During the week of July 1, 2019, Aqua expanded the compliance sampling pool to include additional homes from the Public Water System. During the week of July 22, 2019, Aqua began conducting compliance sampling on an every-other week basis.

14. In order to determine compliance with the lead action level pursuant to Section 611.350 of the Board's PWS Regulations, Aqua is required to conduct lead compliance sampling on a six-month basis pursuant to 35 Ill. Adm. Code 611.356(d), and is required to report the compliance sampling results to Illinois EPA within ten days after the end of each applicable six-month sampling period pursuant to 35 Ill. Adm. Code 611.360(a). Upon entry of this Order, and unless or until further directed in writing by Illinois EPA, Aqua shall remain subject to the six-month lead compliance monitoring periods and reporting requirements, and shall continue to conduct compliance sampling of the Public Water System in accordance with all requirements of Section 611.356 of the Board PWS Regulations, 35 Ill. Adm. Code 611.356; provided, however, that (a) Aqua shall collect additional compliance samples on a monthly basis until such time as Aqua receives written approval from Illinois EPA that such additional sampling is no longer necessary, and (b) in addition to uploading all compliance sampling results electronically to the Illinois EPA, Aqua shall also include a copy of all sampling results in the Progress Reports submitted following receipt of the sample results, pursuant to Section L herein. Pursuant to 35 Ill. Adm. Code 611.356(e), Aqua must utilize the results of all lead compliance samples it collects during the applicable six-month monitoring period in making any compliance determination under Subpart G of Part 611 of the Board's PWS regulations (i.e., all compliance samples collected during the July-December 2019 six-month monitoring period shall be utilized to determine

compliance with the lead action level and reported to the Illinois EPA within ten days of the end of that monitoring period). Any compliance determination with the lead action level under Subpart G of Part 611 of the Board's PWS regulations shall be made at the end of the applicable six-month monitoring period.

**G. Requirements for Customer-Requested Sampling of Water**

15. Upon request of any customer of the Public Water System, Aqua, on its own or through a third party, shall collect and analyze that customer's tap water for the presence of lead, without charge to the customer. Customers may request this service as often as once per month. Aqua shall continue to offer this customer-requested sampling until the earlier to occur of (a) Illinois EPA otherwise advises Aqua in writing or (b) further order of this Court.

16. Commencing upon the entry of this Order, Aqua shall maintain a log of all customer-requested sampling that it conducts ("Customer Sampling Log"). The Customer Sampling Log shall include, at a minimum, for each customer:

- a. The date on which the customer initially contacted Aqua to request sampling of his/her tap water;
- b. The date that Aqua initially sampled the customer's tap water;
- c. The company that conducted the lab analysis;
- d. The results of such sampling;
- e. The dates and results of all subsequent sampling events at the customer's residence or business; and
- f. A summary of any issues that occurred with respect to any sampling event at the customer's residence or business; and
- g. The sampling protocol used to conduct such sampling.

Aqua shall maintain the Customer Sampling Log until the earlier to occur of (a) such time as it receives written approval from Illinois EPA that such log does not need to continue to be maintained and (b) further order of this Court. Aqua shall make the Customer Sampling Log available to Illinois EPA upon request.

**H. Requirements for Addressing Customer Complaints.**

17. Since on or about June 30, 2019, Aqua has maintained a Customer Service Center (877-987-2872) to accept any customer complaints and handle customer questions and concerns relating to the Public Water System. Commencing upon the entry of this Order and continuing until the earlier to occur of (a) Illinois EPA's written authorization otherwise or (b) further order of this Court, Aqua shall maintain a log of all customer complaints it receives (whether through the Customer Service Center or otherwise) related to the compliance measures set forth in this Order and the actions taken to address such complaints. ("Customer Complaint Log"). The Customer Complaint Log shall include, at a minimum:

- a. The name and address of the customer;
- b. The date the complaint was received;
- c. A description of the complaint;
- d. A summary of the actions taken to resolve the customer's complaint; and
- e. The date(s) such actions were taken.

Aqua shall make the Customer Complaint Log available to the State upon request.

**I. Requirements for Public Education.**

18. Commencing upon entry of this Order, Aqua shall continue to comply with the public education requirements set forth in 35 Ill. Adm. Code 611.355(b)(3).

19. Commencing upon entry of this Order, Aqua shall continue to maintain its dedicated website, WaterFactsIL.com, until the earlier to occur of (a) the Illinois EPA authorizes otherwise in writing and (b) further order of this Court.

**J. Requirements for Customer-Requested Blood Lead Level Testing.**

20. Between the date of the entry of this Order until December 31, 2019, Aqua shall continue to provide, without charge to the customer, blood lead level testing, including confirmatory testing when necessary, to customers of the Public Water System. Customers may contact Aqua's Customer Service Center at 877-987-2872 for blood lead level testing.

**K. Material Service Line Inventory Update.**

21. Within thirty (30) days of the date of the entry of this Order, Aqua shall provide to the State a written report on the status of its comprehensive material service line inventory specifically for homes and businesses within the Village.

22. Within sixty (60) days of the date of the entry of this Order, Aqua shall submit a comprehensive plan to Illinois EPA, for its review and comment, if any, to reduce and eliminate the number of service lines reported as "Unknown Material" in <https://www2.illinois.gov/epa/topics/drinking-water/public-water-users/Pages/lead-service-line-information.aspx> located in the Village (the "Service Line Plan"). The Service Line Plan shall include, at a minimum, short-term goals for identifying the material type of each service line (as indicated by the annual Materials Inventory submittal), as well as long-term plans for identifying all lead or copper service lines with lead solder.

23. Upon incorporation of any comments of Illinois EPA to the Service Line Plan, Aqua shall implement the Service Line Plan in accordance with the schedule contained within the Service Line Plan.

**L. Progress Reports.**

24. Commencing on the second Monday after the date of the entry of this Order, and continuing on every other Monday thereafter, Aqua shall submit to the State a written progress report on each of the foregoing compliance items for the corresponding prior two weeks. Aqua shall continue to submit the written progress reports until the earlier to occur of (a) the State's written confirmation that Aqua can discontinue the submittal of the written progress reports and (b) further order of this Court.

**III. RIGHT OF ENTRY**

In addition to any other authority, the Illinois EPA, its employees and representatives, the Illinois 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 Site and the Public Water System, at all reasonable times, for the purposes of carrying out inspections and/or verifying compliance with this Order. In conducting such inspections, the Illinois EPA, its employees and representatives, the Illinois Attorney General, his employees and representatives, and the Will County State's Attorney, his employees and representatives, may take photographs and samples, collect information and remove material from the Site and the Public Water System as they deem necessary. For the sake of clarity, Public Water System as used in this Section III does not include any residences or businesses that receive water from the Public Water System.

**IV. SUBMITTALS**

All submittals and correspondence relating to the requirements of this Order shall be directed to the following persons:

FOR THE PLAINTIFF  
EVAN J. MCGINLEY  
KATHRYN A. PAMENTER  
Senior Assistant Attorneys General  
Environmental Bureau

69 W. Washington, Suite 1800  
Chicago, Illinois 60602  
Phone: (312) 814-3153  
Email: [emcginley@atg.state.il.us](mailto:emcginley@atg.state.il.us)  
Second email: [kpamenter@atg.state.il.us](mailto:kpamenter@atg.state.il.us)  
(Submissions to be sent via email only)

MARY M. TATROE  
Civil Division Chief  
Office of the Will County State's Attorney  
57 N. Ottawa Street  
Joliet, Illinois 60432  
(815) 727-8872  
Email: [mtatroe@willcountyvillinois.com](mailto:mtatroe@willcountyvillinois.com)  
(Submissions to be sent via email only)

FOR ILLINOIS EPA

Michael Roubitchek  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19276  
1021 North Grand Avenue East  
Springfield, IL 62794-9276  
[Mike.Roubitchek@Illinois.gov](mailto:Mike.Roubitchek@Illinois.gov)  
(Submissions to be sent via email, with one hard copy also mailed)

Rick Cobb  
Division of Water  
Illinois Environmental Protection Agency  
P.O. Box 19276  
1021 North Grand Avenue East  
Springfield, IL 62794-9276  
[Rick.Cobb@Illinois.gov](mailto:Rick.Cobb@Illinois.gov)  
(Submissions to be sent via email, with one hard copy also mailed)

FOR DEFENDANT

Aqua Illinois, Inc.  
Renee Cipriano  
Schiff Hardin, LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, IL 60606-6473

Craig Blanchette  
Aqua Illinois Inc.  
1000 S. Schuyler Avenue  
Kankakee, IL, 60901

**V. DUTY TO COOPERATE**

The Parties shall cooperate with each other in the implementation of this Order.

**VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Order in no way affects the responsibilities of Aqua to comply with any other federal, state or local laws or regulations, including but not limited to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the Board Regulations, 35 Ill. Adm. Code 101 *et seq.*

**VII. STIPULATED PENALTIES**

1. If Aqua fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Order, Aqua shall provide notice to the Plaintiff of each failure to comply with this 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. The Plaintiff may make a demand for stipulated penalties upon Aqua for its noncompliance with this Order. However, failure by the Plaintiff to make this demand shall not relieve Aqua of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Aqua knows or should have known of its noncompliance with any provision of this Order.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Aqua 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.

3. The stipulated penalties shall be enforceable by the 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 Order.

4. All stipulated penalty and interest payments shall be made by certified check, cashier's check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund. Payments 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

The case name and case number shall appear on the face of the certified check, cashier's check or money order. A copy of the certified check, cashier's check or money order and any transmittal letter shall be sent to:

Evan J. McGinley  
Senior Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**VIII. DISPUTE RESOLUTION**

The Parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Order, informally and in good faith, within seven (7) days of a Party providing notice to the other Parties of such a dispute. If, however, a dispute arises concerning this Order that the Parties are unable to resolve informally, either Party may, by written motion, within three (3) days of conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Circuit Court for Will County, Illinois, Chancery Division to resolve the dispute between the Parties.

**IX. EXTENSIONS AND MODIFICATIONS**

The Parties may, by mutual consent, extend any compliance dates or modify the terms of this Order without leave of Court. Any such agreed modification shall be in writing, signed by authorized representatives of each Party and incorporated into this Order by reference. Any request for modification shall be made by Aqua in writing and shall be independent of any other submittal made pursuant to this Order. Moreover, notice of a request for any proposed modification shall be provided to the Plaintiff's representatives in Paragraph \_\_\_ of this Order.

**X. RETENTION OF JURISDICTION**

This Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiff or Aqua for the purposes of interpreting and enforcing the terms and conditions of this Order.

**XI. RESERVATION OF RIGHTS**

Nothing contained herein shall be deemed an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by Aqua, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

**XII. EFFECT OF ORDER**

This Order remains in effect until superseded by further order of this Court.

**XIII. BINDING ON SUCCESSORS, ASSIGNS AND FUTURE OWNERS/OPERATORS**

This Order shall be binding upon Aqua, and its successors, assigns and future owners and/or operators of the Site and Public Water System.

**XIV. SIGNATURE**

This Order may be signed in counterparts, all of which shall be considered one agreement.

**XV. STATUS CONFERENCE WITH THE COURT**

This matter is set for a status conference on \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m. at the Will County Courthouse, \_\_\_\_\_, \_\_\_\_\_, Illinois in Courtroom \_\_\_\_\_, without further notice.

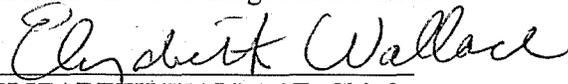
**[Remainder of Page Blank; Text Continues on Page 18]**

WHEREFORE the parties, by their representatives, enter into this Agreed Interim Order and submit it to the Court that it may be approved and entered.

**AGREED:**

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

MATTHEW J. DUNN, Chief  
Environmental/Asbestos Litigation Division

By:   
ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General

Date: 10/29/19

*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: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
DANA VETTERHOFFER  
Acting Chief Legal Counsel

DATE: 10-29-19

WHEREFORE the parties, by their representatives, enter into this Agreed Interim Order and submit it to the Court that it may be approved and entered.

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

MATTHEW J. DUNN, Chief  
Environmental/Asbestos Litigation Division

By: \_\_\_\_\_  
ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General

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: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
DANA VETTERHOFFER  
Acting Chief Legal Counsel

DATE: \_\_\_\_\_

FOR DEFENDANT AQUA ILLINOIS, INC.

BY: C. Blanchette  
CRAIG BLANCHETTE  
President

DATE: October 28, 2019

ENTERED: [Signature]  
JUDGE

DATE: 11/2/19

**COPY**

# **EXHIBIT D**



March 24, 2022

Mr. David Cook  
Manager  
Division of Public Water Supplies, Permit Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

RE: Aqua Illinois-University Park-Facility ID: IL 1975030  
County: Will  
Permit 0071-FY2022  
Request for Supplemental Permit

Dear Mr Cook:

On July 30, 2021, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") issued to Aqua Illinois Construction Permit No. 0071-FY2022 ("Construction Permit") authorizing the switch of corrosion control treatment to zinc orthophosphate for the University Park Water System ("UP Water System"). On that same day, Illinois EPA authorized the operation of the new treatment pursuant to Operating Permit 0071-FY2022 ("Operating Permit" and collectively with the Construction Permit as "Construction/Operating Permit"). In addition to the Standard Conditions, Illinois EPA also included 7 additional Special Conditions in the Construction Permit as part of the Agency's approval of the project to switch the treatment. Circumstances have changed and the UP Water System now meets the lead action level as of the July-December, 2021 compliance monitoring period. Further, on February 15, 2022, Aqua Illinois submitted its Final Optimal Corrosion Control Treatment identifying zinc orthophosphate as the optimal treatment.

Please find enclosed a written request for issuance of a Supplemental Permit to alter the sampling plan contained within the Construction/Operating Permit or in the alternative, issuance of a modification to the Construction/Operating Permit. Issuance of a Supplemental Permit (or modification to the Construction/Operating Permit) is appropriate and consistent with Section 39

of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq* ("Act") and applicable Illinois Pollution Control Board regulations promulgated thereunder.

We look forward to working with the Agency on this written request as quickly as possible. As always, we remain available at any time to discuss any aspect of our sampling and work in University Park.

Sincerely,

A handwritten signature in blue ink that reads "Melissa Kahoun" followed by a horizontal line extending to the right.

Melissa Kahoun  
Environmental Compliance Manager

Aqua Illinois: Permit Application for a Supplemental Permit or, In the Alternative, to Modify Certain Conditions of Construction and Operating Permit 0071-FY2022

On July 30, 2021, the Illinois Environmental Protection Agency (“Illinois EPA”) issued to Aqua Illinois Construction Permit No. 0071-FY2022 (“Construction Permit”) authorizing the switch of corrosion control treatment to zinc orthophosphate for the University Park Water System (“UP Water System”). On that same day, Illinois EPA authorized the operation of the new treatment pursuant to Operating Permit 0071-FY2022 (“Operating Permit”). In addition to the Standard Conditions, Illinois EPA also included 7 additional Special Conditions in the Construction Permit as part of the Agency’s approval of the project to switch the treatment. Circumstances have changed and the UP Water System now meets the lead action level as of the July-December, 2021 compliance monitoring period. Further, on February 15, 2022, Aqua Illinois has submitted its Final Optimal Corrosion Control Treatment Recommendation (“Final OCCT Recommendation”) identifying zinc orthophosphate as the optimal treatment. The Final OCCT Recommendation is provided as Attachment A to this permit application and is incorporated by reference herein. Aqua Illinois is requesting a Supplemental Permit to modify the project, more specifically, to modify the compliance sampling plan contained within the Construction/Operating Permit No. 0071-FY2022, or in the alternative, a permit modification to Construction/Operating Permit.<sup>1</sup>

Aqua Illinois is seeking to alter the compliance sampling plan contained in Special Condition 6 of the Construction/Operating Permit by replacing the existing Special Condition 6 in full with the following:

***Collect between 40 and 60 lead compliance samples from the kitchen tap of compliance pool approved individual sample site locations for the month of March, 2022, as the final month of monthly compliance sampling. Thereafter, the supplier shall be required to collect no fewer than 40 lead compliance samples from compliance pool sample site locations only once in each subsequent six-month compliance sampling period and may then reduce monitoring consistent with Section 35 Ill. Adm. Code 611.356(d)(4). Aerators shall not be cleaned within 96-hours of sample collection.***

Aqua Illinois is also seeking the addition of a new Special Condition 7:

***During calendar year 2022 and during each month in which the supplier is not collecting compliance samples pursuant to Special Condition 6 and 35 Ill. Adm. Code 611.356, the supplier shall collect no fewer than 10 tap water samples from the kitchen tap in 500 ML bottles, after a six-hour stagnation period, testing for lead only, at compliance sampling pool sample site locations. Aerators shall not be cleaned within 96-hours of sample collection***

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Since July 30, 2021, Aqua Illinois has been performing compliance sampling pursuant to the Illinois LCR and the special conditions included in the Construction Permit authorizing the zinc orthophosphate treatment change project. At the time of permit issuance, the UP Water System did not meet the LCR lead action level and a treatment change was needed to address the subset of homes with lead plumbing not responding to the previously approved treatment. Circumstances have changed since permit issuance and the UP Water System now meets the lead action level. Since Aqua Illinois switched to zinc orthophosphate, Aqua has collected 289 samples, observing a 90% percentile of 5.6 ppb. Additionally, 76% of the compliance samples were non-detect for lead since the treatment switch. Further, Aqua

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<sup>1</sup> Since the Agency’s rules regarding the modification of public water supply permits are unclear as to the precise procedures, Aqua Illinois is applying for a Supplemental Permit, Construction/Operating Permit Modification and, by separate submittal, a Special Exception Permit to modify its compliance sampling plan.

Illinois has submitted its Final OCCT Recommendation identifying zinc orthophosphate as the optimal treatment for the UP Water System. In support of the request for issuance of a Supplemental Permit (or, in the alternative, a modification to the Construction/Operating Permit) authorizing the compliance sampling plan presented in the special conditions detailed above, Aqua Illinois submits the following:

1. **The compliance sampling plan contained in Special Condition 6 should be altered now that the UP Water System has met the lead action level.**
  - The alterations to the compliance sampling plan Aqua Illinois seeks are those contained in the special conditions detailed above. The requested compliance sampling plan meets and is consistent with the requirements of the Act and Board regulations specifically those found in the State LCR.
2. **The compliance sampling regime mandated by 35 Ill Adm. Code 611.356 has as its most aggressive sampling frequency, the collection of samples once during each six month compliance monitoring period.**
  - The sampling regime requires sampling once in every six month monitoring period as the most frequent sampling frequency with the regulations allowing for a reduction of monitoring frequency based on achieving certain milestones.
  - The federal LCR, its regulatory history, and the Illinois LCR, do not mandate the imposition of a monthly compliance sampling regime. In promulgating the LCR, USEPA, after considering many factors and comments provided during the LCR rulemaking process, specifically contemplated *and rejected* other sampling frequencies, including quarterly sampling. In fact, in promulgating the final LCR in 1991, EPA specifically stated: “EPA’s approach is fully consistent with the letter and intent of the SWDA.” See 56 Fed. Reg. at 26513 (June 7, 1991). USEPA also considered both customer inconvenience and exhaustion and cost to the supplier when promulgating its approach to compliance sampling frequency. When deciding on the regulatory approach to compliance sampling (with the highest frequency being once every six months), USEPA already considered variability in results and confirmed its approach of not requiring more frequent sampling. Further, in so mandating the number of samples, USEPA specifically found that “the number of samples required in the final rule sufficiently accounts for variability in lead and copper levels...” See 56 Fed. Reg. at 26523.
  - Although 35 Ill Adm. Code 611.356(e) requires that all sampling meeting the compliance sampling requirements be considered in calculating the 90<sup>th</sup> percentile, this regulatory provision is not a source of authority to mandate additional monitoring much less monthly compliance sampling. Further, Section 19 of the Illinois Environmental Protection Act, 415 ILCS 4/19 is also not a source of authority for imposition of monthly LCR-driven compliance sampling.
3. **Section 611. Table D lists the number and frequency of samples that are required. Table D is identical in substance to Table 18 promulgated by USEPA in 1991.**

- **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

BOARD NOTE: Derived from 40 CFR 141.86(c).

- According to the size and status of the UP Water System, Aqua Illinois is required to obtain 40 samples during each six month monitoring period. Under the compliance sampling plan in the Construction/Operating Permit, Aqua Illinois is required to obtain a minimum 40-60 compliance samples each month equating to 240-360 compliance samples during each compliance monitoring period.
4. **The regulatory compliance sampling framework is already designed to include highest risk sampling sites through the site selection requirements of 35 Ill. Adm. Code 611.356.**
    - To account for the sites with the highest risk of lead, 35 Ill. Adm. Code 611.356 requires suppliers to select sites based on a tiering. Aqua Illinois has roughly 80 sampling sites on its approved list.
    - In addition to mandating monthly compliance sampling, Illinois EPA is also requiring Aqua Illinois to return to homes with the highest results each month *within the same compliance monitoring period*. Such an approach (if customer cooperation is obtained) theoretically and practically results in the *same high result home* being counted four times in a compliance monitoring period instead of once.
    - Such a sample consequence was considered and specifically rejected by USEPA in developing the regulatory sampling frequency and number of samples to be required. To be sure, EPA determined that its final rule requires a *sufficient number* of samples and “will catch “high levels” in the System by requiring sampling at high risk sites.” See 56 Fed. Reg. at 26524. Quadrupling high sample results during a single compliance monitoring period to “catch high results” is inconsistent with the overall sampling approach crafted by USEPA and is not necessary to carry out the purposes of the Act or Illinois LCR.
  5. **By mandating both monthly compliance sampling and compliance sampling with a repeated focus on the sites with the highest prior results, the existing compliance sampling plan is causing a bias in the calculation of the 90<sup>th</sup> percentile used to determine whether a lead action level exceedance exists for the water system.**

- USEPA itself identified the bias that occurs when repeat samples are taken from homes within the same compliance monitoring period in its discussion of the promulgation of its 2021 revisions to the LCR “find and fix” follow up sampling requirements. Although the final rule revising the LCR requires multiple home sampling, EPA cautions: “[t]he results of these “find-and-fix” follow up samples would be submitted to the state but would not be included in the system’s 90<sup>th</sup> percentile calculation **because multiple investigatory samples at locations with high lead levels would bias results.**” 86 Fed. Reg. 4198, 4235 (January 15, 2021) (Emphasis Added)
  - The formula for calculating the 90<sup>th</sup> percentile under the Illinois LCR is skewed when a supplier is required to take repeat compliance samples at high result homes during a compliance monitoring period. This is especially exaggerated when the sampling site locations as a whole have already been selected based on the highest risk of lead due to the age of the home (since here, the UP Water System itself does not contain lead nor are there lead service lines).
  - Such bias in selection and exclusion, with an exaggerated focus on high lead results does not benefit the purpose of the sampling, does not provide System customers with an accurate picture of the meaning of the 90<sup>th</sup> percentile calculation as it relates to their water supply and is inconsistent with the regulations.<sup>2</sup>
6. **The LCR does not require water suppliers to collect compliance samples only when water quality parameters (like CSMR or nitrate) present at worst case conditions.**
- Aqua Illinois is not currently seeking alteration to the water quality parameter monitoring conditions included in the Construction/Operating Permit.
7. **The Agency has never mandated the following compliance sampling plan elements on any other water supplier in its regulatory history: monthly compliance sampling; repeated collection of compliance samples from the same high result homes within the same compliance sampling period; and/or compliance samples to be collected specifically during worst case water quality conditions of the compliance sampling period.**
- The Illinois LCR, as promulgated by the Board is an identical in substance rule and USEPA has specifically considered and promulgated the compliance sampling framework it deemed necessary and protective of human health. If the Agency wishes to have in place in Illinois a more stringent compliance sampling regime, it should go through a rulemaking process before the Illinois Pollution Control Board so the “more stringent than federal requirements” can be vetted through notice and comment for all interested stakeholders impacted in Illinois.

During the 30 years since the LCR was promulgated, the frequency of compliance sampling during a compliance monitoring period and the number of compliance samples required to be taken during a compliance monitoring period have both remained unchanged. Aqua Illinois’ requested alteration to the compliance sampling plan presented herein conforms fully with (and goes beyond) the applicable regulatory sampling framework developed by USEPA and

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<sup>2</sup> We note that very recently USEPA has not imposed monthly compliance sampling at its most recent LCR lead action level exceedance case involving Benton Harbor, MI.

promulgated by identical in substance rulemaking by the Board and as specifically imposed by the Illinois PWS regulations.

# **EXHIBIT E**



University Park Progress Report  
June 20, 2022

**Compliance Sampling**

Aqua has met the threshold for the 90<sup>th</sup> percentile for the January-June 2022 six-month compliance monitoring period and has achieved the lead action level, demonstrating optimal corrosion control treatment. Aqua also met this the same threshold and action level for the July-December 2021 compliance monitoring period. Monthly compliance sampling has been concluded and the most recent results for June 2022 can be found at the end of this Report.

Continuous monthly compliance sampling is beyond regulatory requirements applicable to all other water systems - the 90<sup>th</sup> percentile calculation and regulatory framework for compliance monitoring is not based on continuous, repetitive monthly sampling being required of Aqua.

**Customer-Requested Sampling**

Customer-requested sampling continues to be offered with precautions in place to protect customers and utility workers from COVID-19, as needed. Although offered, very few University Park customers have requested sampling. Aqua continues to maintain a log of all customer-requested sampling that it conducts per the terms of the interim order. This log is available for review.

**Corrosion Control Treatment**

The Illinois EPA issued permits dated July 30, 2021 allowing Aqua to use zinc orthophosphate for corrosion control treatment as recommended by Dr. Edwards and Virginia Tech. Aqua has now achieved the 90<sup>th</sup> percentile of the lead action level for both six-month compliance periods which have included the use of zinc orthophosphate, demonstrating attainment of optimal corrosion control for the UP Water System.

**Participation in Response Team**

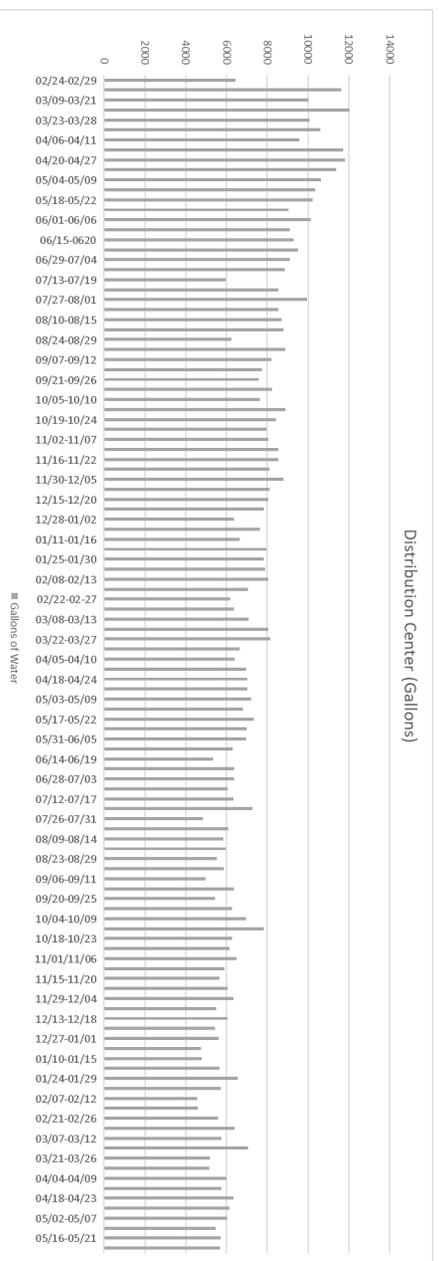
Aqua met with the technical response team on October 20, 2021, to present data and results from Dr. Marc Edwards of Virginia Tech. A follow up call was held again on November 30, 2021. During that call, Dr. Edwards and Dr. Crockett presented an update on the data and sampling results. Since the switch, overall data and data trends continue to support the use of zinc orthophosphate as the optimal corrosion control treatment for the UP Water System. As always, Aqua continues to welcome input or guidance from both the USEPA and the Illinois EPA.

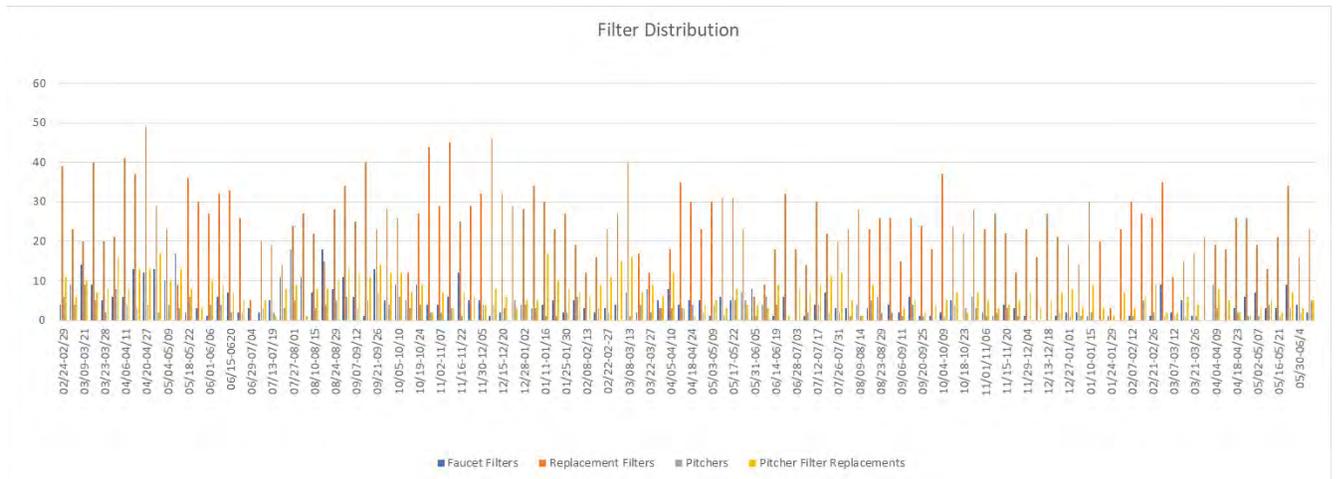
### **Optimized Corrosion Control Treatment**

Aqua has completed the comprehensive corrosion control treatment studies required under the interim order and the Final OCCCT Recommendation submitted by Aqua on February 15, 2022 continues to be pending with Illinois EPA for review and approval. On June 14, 2021, Illinois EPA issued a Special Exception Permit requesting additional information from Aqua relating to the ongoing work of Aqua. Aqua responded to that request. Aqua's work now focuses on the treatment's effectiveness to address lead levels above the threshold in the remaining subset of homes with lead sources, particularly lead solder, within their internal plumbing.

### **Alternative Source of Water**

Aqua continues to distribute bottled water, filter devices and filter replacements in accordance with the State-approved plan despite having met the lead action level for two consecutive six-month compliance periods. Customers continue to visit Aqua's distribution center and request home deliveries.





### Customers Remaining Under Advisory

A total of 1,567 properties are under the advisory in University Park as of Dec. 31, 2019. Only one property was approved by the State to be lifted since Nov. 1, 2019 (Speedway gas station at 24520 Western Avenue in University Park), and consistent with the requirements of the Interim Order, Aqua has a process in place to ensure that properties are not removed without prior approval from the State even if the homes meet criteria previously established by the State or have water sample results consistently under 15 ppb. There are currently at least 183 homes verified to be constructed during and after 1990 still remaining under the advisory. As the State is aware, these homes are presumed not to have lead solder or lead containing plumbing or fixtures since the presence of such lead sources would be illegal. Aqua has repeatedly requested that the State approve the removal of the advisory area so normal water use can be resumed. By not approving removal, the State continues to allow customers to often inaccurately believe their water cannot be used normally, resulting in great inconvenience.

### Customer Complaint Log

Aqua continues to be available to customers who have complaints. Aqua maintains a log of all customer contacts related to University Park, including the compliance measures and actions taken to address complaints. This log is available for the State upon request.

### Public Education

Aqua continues to provide its customers with direct communications and website updates to share current information on the status of Aqua’s ongoing work including sampling information, resource information and helpful tips on best practices. Additional focus has been and will continue to be placed on filter use and proper filter maintenance. Aqua has maintained a filter educational video on the dedicated website and continues to update content with timely information.

June 2022 sampling data		
Samples	Home ID	ug/L
1	4	<1.0
2	5	<1.0
3	6	<1.0
4	7	<1.0
5	8	<1.0
6	9	<1.0
7	10	1.0
8	11	<1.0
9	12	<1.0
10	13	<1.0
11	17	<1.0
12	20	<1.0
13	21	1.6
14	30	<1.0
15	31	9.2
16	33	12
17	34	<1.0
18	43	<1.0
19	45	<1.0
20	47	<1.0
21	48	<1.0
22	58	<1.0
23	60	<1.0
24	61	<1.0
25	62	<1.0
26	63	<1.0
27	66	<1.0
28	67	<1.0
29	68	<1.0
30	70	<1.0
31	73	3.0
32	76	<1.0
33	77	<1.0

34	78	<1.0
35	79	<1.0
36	81	<1.0
37	82	<1.0
38	84	<1.0
39	87	16

40	91	<1.0
41	94	<1.0

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: "Pamenter, Kathryn" <[Kathryn.Pamenter@ilag.gov](mailto:Kathryn.Pamenter@ilag.gov)>  
Date: January 11, 2022 at 2:13:11 PM EST  
To: "Berish, Christina M." <[CBerish@thompsoncoburn.com](mailto:CBerish@thompsoncoburn.com)>, "Cohen, Edward" <[ECOHEN@thompsoncoburn.com](mailto:ECOHEN@thompsoncoburn.com)>, "Cipriano, Renee" <[RCipriano@thompsoncoburn.com](mailto:RCipriano@thompsoncoburn.com)>  
Cc: "Sylvester, Stephen" <[Stephen.Sylvester@ilag.gov](mailto:Stephen.Sylvester@ilag.gov)>, Mary Tatroe <[MTatroe@willcountyillinois.com](mailto:MTatroe@willcountyillinois.com)>, Adam Lipetz <[alipetz@willcountyillinois.com](mailto:alipetz@willcountyillinois.com)>, "O'Laughlin, Ellen" <[Ellen.Olaughlin@ilag.gov](mailto:Ellen.Olaughlin@ilag.gov)>  
Subject: Aqua

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Electronic Filing: Received, Clerk's Office 07/08/2022 \*\*PCB 2023-012\*\*  
All:

Illinois EPA has confirmed that for the July-December 2021 six-month compliance monitoring period, Aqua met the 90th percentile lead action level pursuant to the Lead and Copper Rule, 35 Ill. Adm. Code Part 611, Subpart G.

Sincerely,  
Katie Pamerter

**PLEASE NOTE MY NEW EMAIL ADDRESS**

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