

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

To: *See Attached Service List*

PLEASE TAKE NOTICE that on the 2nd day of August, 2022, I caused to be filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the attached Respondent's Motion to Dismiss the Permit Appeal as to Additional Condition No. 6, a true and correct copy of which is attached hereto and hereby served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

/s/ Kathryn A. Pamenter  
Kathryn A. Pamenter  
Senior Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
69 W. Washington Street, 18<sup>th</sup> Floor  
Chicago, IL 60602  
773.590.7824  
Kathryn.Pamenter@ilag.gov

**SERVICE LIST**

Don Brown, Clerk of the Board  
Illinois Pollution Control Board  
60 E. Van Buren St., Suite 630  
Chicago, IL 60605  
Don.Brown@illinois.gov  
(by *electronic filing*)

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren Street, Suite 630  
Chicago, IL 60605  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)  
(Via Email)

Daniel J. Deeb  
Alex Garel-Frantzen  
Sarah L. Lode  
ARENTFOX SCHIFF LLP  
233 South Wacker Drive, Suite 7100  
Chicago, IL 60606  
Dan.Deeb@afslaw.com  
Alex.Garel-Frantzen@afslaw.com  
Sarah.Lode@afslaw.com  
*Counsel for Aqua Illinois, Inc.*  
(via *e-mail*)

**CERTIFICATE OF SERVICE**

I, Kathryn A. Pamenter, a Senior Assistant Attorney General, hereby certify that on the 2nd day of August, 2022, I caused to be served the foregoing Notice of Electronic Filing and Respondent's Motion to Dismiss the Permit Appeal as to Additional Condition No. 6 upon the parties named on the attached Service List, via e-mail or electronic filing as indicated.

/s/ Kathryn A. Pamenter  
Kathryn A. Pamenter  
Senior Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
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ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT’S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Respondent”), by and through the Attorney General of the State of Illinois, KWAME RAOUL, and pursuant to 35 Ill. Adm. Code 101.500, 101.506, and 105.108(e), and Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), hereby moves for the dismissal of Petitioner’s Permit Appeal as to Additional Condition No. 6 (the “Motion”). In support of this Motion, Respondent states as follows:

**BACKGROUND**

1. On August 16, 2019, Plaintiff, People of the State of Illinois, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of Respondent, and *ex rel.* JAMES W. GLASGOW, State’s Attorney for Will County, Illinois, filed a Complaint for Injunctive Relief and Civil Penalties (“State Court Complaint”) against Aqua Illinois, Inc. (“Aqua” or, as to this Permit Appeal, “Petitioner”) in the Circuit Court for the Twelfth Judicial Circuit, Will County, Illinois (“Circuit Court”). A true and correct copy of the State Court Complaint is attached hereto as Exhibit 1.

2. The State Court Complaint alleges that Aqua, as to the public water system it owns and operates in the Village of University Park, Illinois, (a) failed to provide assuredly safe water in violation of Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2018), and Section 601.101 of the Illinois Pollution Control Board (“Board”) Public Water Supply (“PWS”) Regulations, 35 Ill. Adm. Code 601.101; (b) violated the drinking water monitoring site plan and sampling requirements set forth in 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) violated construction permit requirements under 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) violated operating permit requirements under 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) created and maintained a public nuisance at common law. (*See Exhibit 1.*)

3. On November 1, 2019, the Circuit Court entered an Agreed Interim Order, a true and correct copy of which is attached hereto as Exhibit 2 (the “Agreed Interim Order”). Pertinent to this Motion, Paragraph II.F.14. of the Agreed Interim Order provides:

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. . . .

(Exhibit 2 at p. 8 (emphasis added).)

4. On January 18, 2022, Aqua filed its Revised Motion to Modify Agreed Interim Order in the State Court Complaint case, a true and correct copy of which is attached hereto as Exhibit 3 (without exhibits). Pertinent to this Motion to Dismiss, Aqua's Revised Motion to Modify Agreed Interim Order "requests that the heightened testing requirements (of monthly compliance testing) be concluded. In its place, Aqua requests and offers to perform the testing twice during the January-June 2022 period. Aqua then requests a return to the normal, regulatory-based sampling parameters required of every other public water supplier in Illinois." (Exhibit 3 at p. 3.)

5. On January 25, 2022, the Circuit Court entered an Order in the State Court Complaint case that, among other things, recognized "[t]he stakes in this case are high: the safety of our water supply" and found that "the government should have [the] opportunity" "to conduct discovery and file written opposition briefs" regarding Aqua's Revised Motion to Modify Agreed Interim Order, including such motion's request to eliminate the monthly compliance sampling requirement. A true and correct copy of the January 25, 2022 Order is attached hereto as Exhibit 4, at p. 1.

6. On April 28, 2022, the Circuit Court entered an Order setting forth a discovery schedule in the State Court Complaint case, a true and correct copy of which is attached hereto as Exhibit 5.

7. On June 29, 2022, Respondent issued a Special Exception Permit (the “June 2022 Permit”) to Petitioner, a true and correct copy of which is attached hereto as Exhibit 6. The June 2022 Permit provides, in pertinent part, that:

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.

(Exhibit 6 at p. 3.)<sup>1</sup>

8. On July 8, 2022, Petitioner filed its Petition for Review of an Illinois Environmental Protection Agency’s Special Exception Permit Decision and Motion for Partial Stay. Pertinent to this Motion, Petitioner appeals Respondent’s denial of Petitioner’s request to eliminate the monthly lead compliance monitoring<sup>2</sup> requirement, as set forth in Additional Condition No. 6 of the June 2022 Permit.

### **ARGUMENT**

1. Section 105.108 of the Board’s General Rules provides that “[a] petition is subject to dismissal if the Board determines that: . . . e) [o]ther grounds exist that bar the petitioner from proceeding.” 35 Ill. Adm. Code 105.108. One such ground is the existence of a pending case, such that the later-filed case, or a portion of it, is duplicative of the first. *See, e.g., 735 ILCS 5/2-*

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<sup>1</sup> Additional Condition #6 of construction permit 0071-FY2022 provided, in pertinent part, that “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. . . . (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). A true and correct copy of construction permit 0071-FY-2022 is attached hereto as Exhibit 7.”

<sup>2</sup> The terms “monitoring”, “testing”, and “sampling” are used interchangeably by the parties in referring to this requirement.

619(a)(3) (“Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. . . . (3) That there is another action pending between the same parties for the same cause”); 35 Ill. Adm. Code 101.202 (“[d]uplicative’ means the matter is identical or substantially similar to one brought before the Board or another forum”); *Village of Addison v. City of Wood Dale*, No. 98-104 (March 5, 1998) (dismissing duplicative Board case); *Brandle v. Ropp*, No. 85-68 (June 13, 1985) (same).

2. In *Schmidt v. Gaynor*, the court recognized that “[s]ection 2-619(a)(3) is an ‘inherently procedural’ device, aimed at avoiding duplicative litigation (*Miller v. Thomas*, 275 Ill. App. 3d 779, 786 (1995)), and it should be construed liberally (*Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill. App. 3d 780, 785 (1998)).” 2019 IL App (2d) 180426, ¶ 9 (May 22, 2019). The *Schmidt* court also stated that “[t]he purpose of the two actions need not be identical; rather there need only be a substantial similarity of issues between them.” *Id.* (quoting *Terracom Development Group, Inc. v. Village of Westhaven*, 209 Ill. App. 3d 758, 762 (1991)).

3. The State Court Complaint case brought, in part, on behalf of Respondent against Aqua, and the above-captioned Permit Appeal that Aqua/Petitioner filed against Respondent involve the same parties. (*Compare* State Court Complaint, Exhibit 1 at pp. 1-2, *with* Petitioner’s Petition, Dkt. Entry – Initial Filing, at pp. 6-7.)

4. The State Court Complaint case and the above-captioned Permit Appeal arise from the same set of facts. (*Compare* State Court Complaint, Exhibit 1 at ¶¶ 4-5, 7-9, 29, *with* Petitioner’s Petition, Dkt. Entry – Initial Filing, at ¶¶ 1-3.)

5. The State Court Complaint case involves, in part, the monthly compliance sampling requirement for Aqua’s University Park public water system, which requirement Petitioner is



seeking to eliminate through this Permit Appeal. (*Compare* Agreed Interim Order, Exhibit 2, at Paragraph II.F.14., *with* Petitioner's Petition, Dkt. Entry – Initial Filing, at pp. 11-12.)

6. Petitioner has already moved to eliminate the monthly sampling requirement through its Revised Motion to Modify Agreed Interim Order in the State Court Complaint case, and the Circuit Court determined that the government is entitled to discovery and briefing on that issue. *See supra* at Background, ¶¶ 4-5. Petitioner is impermissibly seeking to circumvent the pending State Court Complaint case through this Permit Appeal regarding Additional Condition No. 6, as the matters are substantially similar. Accordingly, the Permit Appeal as to such condition should be dismissed.

**CONCLUSION**

For the reasons stated herein, Respondent respectfully requests that the Board enter an order (i) granting Respondent's Motion, (ii) dismissing the Permit Appeal as to Additional Condition No. 6, and (iii) granting such other relief as the Board deems appropriate.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

/s/ Kathryn A. Pamenter  
Kathryn A. Pamenter  
Senior Assistant Attorney General  
Ann Marie A. Hanohano  
Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
69 W. Washington Street, 18<sup>th</sup> Floor  
Chicago, IL 60602  
773.590.7824  
312.881.0556  
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AnnMarie.Hanohano@ilag.gov

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ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
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**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
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EXHIBIT 1

STATE COURT COMPLAINT

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

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

Plaintiff, )

v. )

No. 19CH1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

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

**COUNT I**

**FAILURE TO PROVIDE ASSUREDLY SAFE WATER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**B. AQUA’S AUGUST 2018 SAMPLING**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

action level for lead.

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

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

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

a) No person shall:

\* \* \*

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

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

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

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

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

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

for ordinary domestic consumption.

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

Code 601.101 now reads as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT II**

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

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

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

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

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

a) Applicability and Scope.

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

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

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

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

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

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

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

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

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

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

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

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



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

B) CWS Tier 2 sampling sites. "CWS Tier 2 sampling sites" must include the following buildings, including multiple-family structures:

i) Those that contain copper pipes with lead solder installed after 1982 or which contain lead pipes; or

ii) Those that are served by a lead service line.

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

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

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

\* \* \* \*

4) Selection of sampling sites. Suppliers must select sampling sites for their sampling pool as follows:

A) CWS Suppliers. CWS suppliers must use CWS tier 1 sampling sites, except that the supplier may include CWS tier 2 or CWS tier 3 sampling sites in its sampling pool as follows:

i) If multiple-family residences comprise at least 20 percent of the structures served by a supplier, the supplier may use CWS tier 2 sampling sites in its sampling pool; or

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

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

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

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

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

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

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

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

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

- c) Number of samples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **COUNT III**

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

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

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

Plans and specifications; demonstration of capability; record retention.

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

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

a) No person shall:

\* \* \*

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### **COUNT IV**

#### **OPERATING PERMIT VIOLATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT V**

**COMMON LAW PUBLIC NUISANCE**

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

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

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

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

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

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

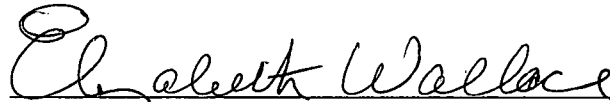
WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, AQUA ILLINOIS, INC., with respect to Count V.

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

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

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

BY:



ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General

OF COUNSEL:

EVAN J. MCGINLEY (ARDC No. 6237655)

KATHRYN A. PAMENTER

Senior Assistant Attorneys General

Environmental Bureau

69 W. Washington, Suite 1800

Chicago, Illinois 60602

Phone: (312) 814-3153

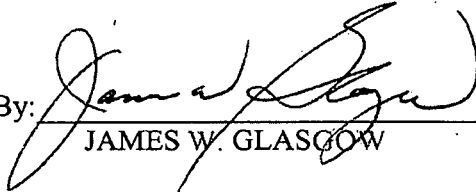
Email: [emcginley@atg.state.il.us](mailto:emcginley@atg.state.il.us)

Second email: [kpamenter@atg.state.il.us](mailto:kpamenter@atg.state.il.us)

Second email: [mcacaccio@atg.state.il.us](mailto:mcacaccio@atg.state.il.us)

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

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

By:   
\_\_\_\_\_  
JAMES W. GLASGOW

OF COUNSEL:

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)



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

EXHIBIT 2

AGREED INTERIM ORDER

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

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

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**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@willcountyillinois.com](mailto:mtatroe@willcountyillinois.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  
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  
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.

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

*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: *11/1/19*

**COPY**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

EXHIBIT 3

AQUA'S REVISED MOTION TO MODIFY

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

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, and *ex rel.* )  
JAMES W. GLASGOW, State’s Attorney )  
for Will County, Illinois, )  
Plaintiff, )  
 )  
v. ) No. 19-CH-1208  
 )  
AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )  
Defendant. )

**DEFENDANT’S REVISED MOTION TO MODIFY AGREED INTERIM ORDER**

Defendant Aqua Illinois, Inc. (“Aqua”) respectfully moves this Court to modify the November 1, 2019 Agreed Interim Order (the “Interim Order”) which set forth initial, agreed-upon, injunctive relief in this case, and, in support thereof, states:

**INTRODUCTION**

The circumstances giving rise to the original injunctive relief entered in this case—relief which Aqua agreed to at the time—have dramatically changed. Aqua corrected the alleged permit violations in 2018 and corrected the alleged monitoring violation in 2019 before the filing of the State’s Complaint. Now, the lead action level exceedance no longer exists. Test results for the most recent six-month period (July–December 2021) show that the drinking water for the Village of University Park (the “Village” or “University Park” or “UP”) has met the applicable, specific regulatory lead action level. The State affirmed this achievement, writing on January 11, 2022, “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.” (Ex. A to the Memorandum in Support, January 11, 2022

email from State).

In addition to being factually unsupportable at this point, ongoing injunctive relief of the kind contained in the Interim Order is neither contemplated by nor warranted given the regulatory framework. The existing federal and state regulatory regime, promulgated as authorized by Congress to address lead in drinking water, directs a water supplier to perform and refrain from performing very specific actions akin to injunctive relief, and even addresses actions to be taken in the event a lead action level exceedance occurs.

Because of the changed circumstances and the existing, detailed regulatory framework, many aspects of the Interim Order are now unnecessary, moot, and/or inappropriate. Accordingly, Aqua requests these modifications:

*First*, regarding § II(A) of the Interim Order, Aqua requests modification of the Alternative Sources of Water distribution plan whereby Aqua agreed to provide faucet filtering devices and bottled water. Because a lead action level no longer exists, Aqua requests a phased approach whereby Aqua continues to supply faucet filtering devices and bulk water (“Customer Confidence Resources”), which are phased out once the lead action level is met for two consecutive six-month periods.

*Second*, regarding § II(B), because the lead exceedance has ended, Aqua requests that the Court dissolve the name “lead advisory area” created by the Interim Order, and, instead, declare that geographical area as the “Customer Confidence Resources Area”, which exists to provide the Customer Confidence Resources. Aqua further requests that a specific subset of homes, namely, homes built in or after 1990, be removed from the “lead advisory area” (or Customer Confidence Resources Area, as redesignated) because those properties were built after Illinois and Federal statutes banning construction with lead



plumbing took effect and could not have legally been constructed with lead materials. There is no justification for keeping these properties within the designated area.

*Third*, regarding § II(F), Aqua requests that the heightened testing requirements (of monthly compliance testing) be concluded. In its place, Aqua requests and offers to perform the testing twice during the January-June 2022 period. Aqua then requests a return to the normal, regulatory-based sampling parameters required of every other public water supplier in Illinois.

The current monthly compliance sampling, which requires Aqua to schedule sampling of over 40 customers each month, is beyond regulatory requirements, holds Aqua to a standard no other water supplier must meet, inconveniences customers, and causes numerous *unnecessary* in-home interactions during a global pandemic. As provided by the Interim Order, Aqua will continue to offer free tap water sampling, once per month, although beyond regulatory requirements, to any customers wishing to have their water tested.

Because the *pertinent* facts giving rise to this motion are undisputed, Aqua requests expeditious briefing on this motion, without discovery and without delay. To avoid attempts to delay, Aqua already provided the State with all information it requested, including during numerous meetings with Aqua's in-house and outside technical experts to answer every question posed by the State. Aqua also tried to work with the State on revisions to the Interim Order and an appropriate final order containing the benchmarks for concluding this case, to no avail. While Aqua has provided the State with an extensive amount of information (tantamount to robust, one-directional informal discovery), the facts to this motion are not in dispute and support the proposed modifications to the Interim Order. Because the parties have been unable to agree upon modifications to the Interim Order, Aqua respectfully seeks relief from this Court.

**BACKGROUND**

Though the specific legal requirements of both the Federal Lead and Copper Rule (“LCR”) and the “identical in substance” Illinois PWS Lead Rules are very detailed, the basic points are not:

- In response to concerns about the coloration and secondary standards of the water, Aqua switched from using groundwater as its source of water for its University Park water supply system to water from the Kankakee River, and the switch was approved by permit by the Illinois Environmental Protection Agency (“Illinois EPA”);
- On June 13, 2019, Aqua learned from its routine tap water testing there was a lead action level exceedance as that term is defined in the Illinois PWS Lead Rules, and promptly informed the Illinois EPA of the exceedance;
- On June 14, 2019, without order or governmental directive and while investigating the source of the unexpected increase in lead levels, Aqua supplied potentially affected customers with free bottled water. Shortly thereafter, Aqua also distributed NSF/ANSI certified faucet filters and pitcher filters to customers free of charge. And, Aqua proactively and voluntarily issued a “do not consume” directive (not required by law) to potentially affected customers out of an abundance of caution;
- On August 16, 2019, notwithstanding the foregoing actions voluntarily and proactively taken by Aqua, and notwithstanding that Aqua had addressed issues of non-compliance, the State sued;
- On November 1, 2019, in the spirit of cooperation, Aqua agreed to the Interim Order as it primarily memorialized the actions Aqua had been voluntarily taking since first learning of the action level exceedance;

- Aqua learned through investigation that the water delivered to its customers does not contain lead nor does the UP Water System infrastructure owned by Aqua contain lead; *rather*, for the houses in University Park where lead was an issue, the source of the lead found in the tap water was from those customers' own lead-containing plumbing and/or lead solder within those customers' own homes (Aqua has no legal right to enter privately-owned homes);
- The State has not disputed that the source of lead is from those customers' own lead-containing plumbing, rather than from the source water or UP Water System infrastructure owned by Aqua;
- Because of the action level exceedance, the Illinois PWS Lead Rules require that Aqua (irrespective of fault or lack of fault) try to optimize the treatment added to the water supply system to create a coating internal to the pipes and plumbing (including coating on the customer's own pipes and plumbing) to minimize leaching of the customers' lead plumbing into the tap water;
- Aqua has made a Herculean effort to optimize the treatment consistent with the Illinois PWS Lead Rules (while providing bottled water and filter resources free of charge to its customers, though not required by any regulatory provision);
- Tap water compliance testing now demonstrates that the tap water in University Park is meeting the lead action level as set forth in the Illinois PWS Lead Rules;
- Due to: the changed and improved circumstances; the "in-compliance" status of the UP Water System; and the Illinois PWS Lead Rules' structure that addresses, step by step, the actions a supplier must take when faced with a lead action level exceedance associated with a water system it operates, certain agreed-to injunctive relief provisions

in the November 2019 Interim Order are no longer warranted<sup>1</sup>;

- Some of the Interim Order injunctive relief may even be counterproductive to optimizing the treatment and gaining customer confidence in the water;
- Aqua has always had its customers at the heart of its actions and set the example of how a responsible water supplier should react and behave in the face of a lead action level exceedance; and,
- Aqua has been and remains committed to the University Park community.

The injunctive relief provided through the initial Interim Order was agreed to in good faith to demonstrate that Aqua was working in full cooperation with the State in the best interest of University Park. However, appropriate and reasonable modifications to the Interim Order are now warranted to reflect the new and improved circumstances. This step should ideally help move this matter towards a permanent and appropriate resolution. Aqua welcomes the Court ordering the parties to a pretrial settlement conference or outside mediation to reach final resolution of this matter.

**FACTUAL AND EQUITABLE BASIS**  
**FOR MODIFYING THE INTERIM ORDER**

1. The primary step that Aqua and other water suppliers are required by regulation to

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<sup>1</sup> Aqua filed a similar motion on December 31, 2020 because the UP Water System met the lead action level and thus had achieved the regulatory benchmark for drinking water quality for period July 1, 2020 through December 31, 2020. While that motion was pending, in the Spring of 2021, an increased number of compliance sampling results tested above the regulatory threshold even though there was still an overall downward (positive) trend for the UP Water System. To address this issue, Aqua commenced, with federal and State oversight, immediate and unprecedented studies to ascertain the root cause of the unanticipated lead levels in the small subset of homes. In the Summer of 2021, after open and robust technical communications with the State, the State granted Aqua's permit application to use a new treatment to address the increased lead levels in certain homes. The science – and the related new treatment protocol – worked. As explained *infra*, Aqua met the lead action level for the second six-month period of 2021. Because of the change in factual circumstances, Aqua withdrew its prior motion and is now refileing it with updated facts.

take to address this complex situation is to add corrosion control treatment to the water and optimize it. This is done with regulatory oversight, all to maximize the effectiveness of the coating that controls and minimizes the release of lead.

2. Before the State's filing of its Complaint and the entry of the Interim Order, Aqua retained two national lead experts to assist it with identifying the optimal corrosion control treatment for the circumstances existing in University Park. (Ex. C to Memorandum in Support, Affidavit of Christopher Crockett, at ¶ 3).

3. One such expert, Dr. Marc Edwards, a Charles Lunsford Professor with Virginia Polytechnic Institute & State University, working with Aqua's technical team, identified nitrates existing in the source water as the primary influence on the delayed response of certain homes to the corrosion control treatment previously approved for University Park. (Ex. C at ¶ 4).

4. With State approval, the corrosion control treatment was changed from an orthophosphate-based treatment to an orthophosphate treatment supplemented with zinc (known as "zinc orthophosphate"). (Ex. C at ¶ 5). This new treatment proved critical to addressing the lead sources within that subset of homes not responding as efficiently to the orthophosphate treatment. (Ex. C at ¶ 6). Because of the new treatment and actions taken by Aqua, the UP Water System has now met the lead action level. (Ex. C at ¶ 7).

5. Aqua's compliance testing reveals there is no longer a lead action level exceedance because the 90th percentile lead concentration measured over the most recent six-month compliance sampling period (July through December 2021) is 8.5 micrograms per liter (ug/L), which is below the 15 ug/L action level. (Ex. D to Memorandum in Support, Affidavit of Melissa Kahoun, at ¶ 2). Meeting the lead action level represents a substantial improvement in the overall

water quality in University Park as there is no longer a lead level exceedance.<sup>2</sup>

6. The compliance testing demonstrates that the UP Water System has achieved the benchmark for drinking water quality as to lead—the same benchmark required of all water suppliers nationally. The benchmark applicable throughout the State of Illinois (and nationally) is for water suppliers to provide water that meets the lead action level of 15 ug/L at the 90th percentile in a compliance sampling pool calculated through a formula set out in the federal and state rules. In Aqua's case, the compliance period is six months.

7. Aqua continues to take all steps required by the Illinois PWS Lead Rules. (Ex. B at ¶ 10). This includes taking steps to continue meeting the lead action level despite the extraordinary requirement that Aqua perform compliance testing *every* month for the past 25-month period, essentially requiring Aqua to meet the lead action level 12 times each year.<sup>3</sup>

8. Two important aspects of the Interim Order reflect the situation at the time of its entry: it was *agreed* and *interim*: i) there were immediate concerns shared by the parties regarding the elevated lead levels in the UP Water System, which demanded fast action; ii) a cooperative but formalized process was appropriate to demonstrate a unified approach to the community; iii) Aqua was already conducting an unprecedented and proactive, voluntary response to the elevated lead levels; and, iv) eventually, changed circumstances would justify concluding the temporary injunctive relief set forth in the Order.

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<sup>2</sup> Importantly, an exceedance of a lead action level is *not* considered a *violation* of Illinois PWS Lead Rules; rather, consistent with its name, it is an action level by which action must be taken when exceeded, precisely as Aqua has done since learning of the action level exceedance.

<sup>3</sup> Notably, in Illinois and nationally, consistent with the federal LCR and the Illinois PWS Lead Rules, some water suppliers, such as the City of Chicago, are only required by regulators to demonstrate that they achieve this benchmark once every three years; and even more pertinent to this Motion is the absence in the rules of any mandate that a supplier test every single month (even after a lead exceedance) for over a 25-month period with samples, as here, totalling over 6,000. Yet that is exactly what Illinois EPA has required of Aqua.

9. The Interim Order did not include detailed benchmarks setting forth exactly when and how most of the interim injunctive provisions would end. Rather, the injunctive provisions were drafted with a simple dichotomy: either the State would approve Aqua to change or cease its performance of a particular form of injunctive relief (when appropriate), or, the Court would so order. At that time and in the spirit of cooperation, Aqua had no reason to believe that it would not be allowed to return to the testing protocol required by the Illinois PWS Lead Rules *once the water quality in University Park achieved the federal and state regulatory benchmark – a benchmark that places University Park in the same situation as every other water supply that has met the LCR lead action level.*

10. The requested amendments are not simply a matter of convenience to Aqua. Rather, Aqua is concerned that the continuation of certain injunctive obligations in the Interim Order is inadvertently sending the wrong message to University Park customers that the water is not safe to use.

11. The status quo under the Interim Order may also discourage customers from using their water from the kitchen and bathroom taps normally, or even at all, and such use is needed so the treatment can move with the water through the plumbing to create and maintain the protective coating created by the corrosion control treatment. (*See* Ex. B at ¶ 12).

12. Because of the foregoing, three specific injunctive provisions of the Interim Order are ripe for modification at this time and are addressed by this motion:

- 1) the provision requiring Aqua to distribute “Alternative Sources of Water” (Interim Order at § II(A));
- 2) the provision requiring Aqua to maintain the so-called “lead advisory area” (*Id.* at § II(B)); and,

- 3) the provision requiring Aqua to collect additional, monthly compliance samples; 'additional' meaning besides the number of and frequency of compliance samples set forth in the Illinois PWS Lead Rules (*Id.* at § II(F)).

13. In short, Aqua has met the lead action level shown through compliance sampling, addressed the issues of non-compliance pled within the State's Complaint, and diligently complied with and exceeded the terms of the Interim Order and applicable provisions of the Illinois PWS Lead Rules; together, these achievements constitute changed factual conditions that justify the requested reasonable and equitable modifications to the injunctive provisions of Interim Order.

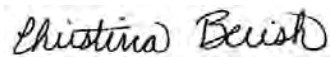
14. Aqua adopts and incorporates its Memorandum in Support of Motion to Modify the Agreed Interim Order as if stated herein. In the event the Court deems an evidentiary hearing on this motion necessary, Aqua reserves the right to call witnesses.

**PRAYER FOR RELIEF**

Defendant Aqua Illinois, Inc. respectfully requests that the Court modify the November 1, 2019 Agreed Interim Order for the reasons set forth above, and enter the relief sought in the proposed First Amended Interim Order (Exhibit E to the Memorandum in Support), and for such other relief as the Court deems appropriate.

Dated: January 18, 2022

Respectfully submitted,  
AQUA ILLINOIS, INC.



Renee Cipriano – [rcipriano@thompsoncoburn.com](mailto:rcipriano@thompsoncoburn.com)  
Edward A. Cohen – [ecohen@thompsoncoburn.com](mailto:ecohen@thompsoncoburn.com)  
Christina Berish - [cberish@thompsoncoburn.com](mailto:cberish@thompsoncoburn.com)  
THOMPSON COBURN LLP  
55 E. Monroe Street, 37th Fl.  
Chicago, IL 60603  
312.346.7500



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

EXHIBIT 4

ORDER ENTERED ON JANUARY 25, 2022

FILED

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

22 JAN 25 AM 11: 54

COURT REPORTER  
WILL COUNTY, ILLINOIS  
WILL COUNTY COURT ANNEX

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

Plaintiff, )

v. )

No. 19 CH 1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**ORDER**

The case is before the Court on a motion to modify an agreed injunctive order. The Illinois Attorney General and Will County State's Attorney oppose the motion and request leave to conduct discovery and file written opposition briefs. The Court agrees that the government should have that opportunity. However, regarding briefing, the Court finds it would be helpful to moderately guide the parties in the scope of their written arguments.

**I. Background**

The stakes in this case are high: the safety of our water supply. As President Obama once said, "Without regard to whether some place is wealthy or poor, everybody should have the chance at clean air and clean water."<sup>1</sup>

On August 16, 2019, plaintiffs filed a complaint alleging that Aqua Illinois (a water utility company) is providing water to the University Park area that, among other things, contains a high lead content. The complaint seeks an injunction, civil penalties, and other relief. Aqua answered and denied many of the government's allegations, but as a practical matter, there appears to be no dispute that University Park's water supply has serious problems.

On November 1, 2019, the parties entered into an agreed interim injunctive order (the "Injunction"), and that order was subsequently modified by agreement of the parties. At bottom, the Injunction requires Aqua to comply with various existing statutory and regulatory schemes, commands Aqua to take certain steps to resolve the quality levels of University Park's water, and

<sup>1</sup> <https://obamawhitehouse.archives.gov/the-press-office/2010/10/14/remarks-president-a-youth-town-hall>

establishes an elaborate oversight system whereby the government can more closely monitor Aqua's progress, among other things.

Since the entry of the Injunction, the parties have generally sought continuances in the case as they seek to correct the water-quality problems and resolve the case amicably.

## II. DISCUSSION

In its motion, Aqua cites *Benson v. Isaacs*, 22 Ill. 2d 606, 609 (1961) for the proposition that an injunction may be modified or dissolved where there exists a change in the law, or where equity no longer justifies the injunction's existence. See also *Cross Wood Prod., Inc. v. Suter*, 97 Ill. App. 3d 282, 287 (1981) (stating "the mere passage of time together with the impact of preliminary injunction has \*\*\* served to return the parties to the status quo").

The key distinction here, however, is that this case involves was an *agreed* preliminary injunction. An agreed order is not exactly a judicial determination of the parties' rights; rather, it is a memorialization of an agreement between the parties, coupled with the enforceability of the Court's contempt power. See *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13; see also *Vill. of Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 42 (1985); see also *Comet Cas. Co. v. Schneider*, 98 Ill. App. 3d 786, 790 (1981) (stating that a valid consent decree is binding upon the parties and is enforceable as are other judgments, including through contempt proceedings).

Although agreed orders are akin to private contracts and thus generally binding on the parties, "exceptions arise where one party shows 'fraudulent misrepresentation or coercion in the making of the agreement, the incompetence of one of the parties, gross disparity in the position or capacity of the parties, errors of law apparent on the face of the record, or newly discovered evidence.'" *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 28 (quoting *City of Marseilles v. Radke*, 287 Ill. App. 3d 757, 760 (1997)); see also *Olsen v. Staniak*, 260 Ill.App.3d 856, 861 (1994) (finding that an agreed order is conclusive on the parties and cannot be amended or set aside unless the order results from fraudulent misrepresentation, coercion, incompetence, gross disparity in the position or capacity of the parties, or newly discovered evidence). At least one case line goes further, stating that an agreed order "may be cancelled, rescinded, or modified by operation of law or by the explicit or implicit agreement of the parties." See *Kandalepas v. Economou*, 269 Ill. App. 3d 245, 252 (1994), citing *Volk v. Kendall*, 71 Ill.App.3d 211, 213 (1979).

The United States Supreme Court has also weighed in on this issue. In *U.S. v. Swift & Co.*, 286 U.S. 106, 114 (1932), the Court held that "[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned." In applying the "grievous wrong" standard, the Court noted the limited nature of its inquiry, stating:

There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything

has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting.

*Id.*

Still, the Court is not aware of many cases that are particularly helpful on how to deal with a contested motion to modify or vacate an agreed preliminary injunction. Further, the Injunction in this case states that it "is not a final resolution of the merits of the Plaintiff's Complaint, but rather addresses [the government's] most immediate concerns regarding the allegations in the Complaint.

Also, it seems to the Court that the Injunction suffers from one infirmity: it does not expressly envision the ultimate transition from an agreed preliminary injunction to a final resolution of the case. To be sure, the parties could simply resolve the case on their own, and ultimately present some sort of agreed final order. However, the case is now roughly 2.5 years old and that final resolution is not here. Given the importance of this case to the health and welfare of University Park's residents, the Court may need to give the case a push.

### III. CONCLUSIONS

The Court finds that the government ought to be permitted to respond in writing to the motion to modify.

The Court's preliminary thought is that Aqua *might* be able to persuade the Court that the existing preliminary injunction is no longer necessary in its present form. The caselaw and standards for vacatur or modification of an injunction are rather straightforward, as discussed above. However, Aqua is not seeking to merely be released from its obligations in the Injunction. Rather, it is looking to modify those obligations and transform the *agreed* Injunction order into one that is a *disputed* injunction order. In other words, the entitlement to modification is only half the equation; the other half entails the propriety of the modifications themselves. The Court would like the parties to inform the Court as to the standards associated with the contested modification of an agreed injunction. For example, *can* the Court modify the terms of an agreed order when one party does not consent, as this is akin to a court modifying part of a contract? Or would the entire agreed order have to be vacated and the parties begin at square one? And given that it is now Aqua that seeks relief from the agreed order, would it now be Aqua's burden to establish the elements of a (less stringent) injunction? The Court requests that the parties address these questions in their briefs.

Further, to the extent Aqua is seeking a modification to the Injunction, the Court finds the government is entitled to discovery relative to the allegations in the Complaint, the bases Aqua asserts to justify its pending motion, and the propriety of the proposed amended order. That discovery should be taken prior to any briefing relative to the motion to modify.

Additionally, there is a pending motion to strike the amended affirmative defenses, and that motion is fully briefed. The Court has let that dog sleep while the parties were working cooperatively. However, if the Court is being called upon to modify the Injunction, it wishes to resolve this issue first. The Court has reviewed the amended affirmative defenses, the motion to strike, and the related briefs. The Court finds that oral argument regarding the motion to strike would be unnecessary and unhelpful. *Korbelik v. Staschke*, 232 Ill. App. 3d 114, 118–19 (1992) (Oral argument in a civil proceeding tried before the court without a jury is a privilege, not a right, which is accorded to the parties by the court in its discretion). The Court denies the motion to strike. In doing so, the Court stresses that it is not making any factual determinations relative to the motion; only that the affirmative defenses are sufficient to survive a motion to strike. The Court also acknowledges that the first affirmative defenses does not seem to advance a recognized defense. However, 735 ILCS 5/2-613(d) permits a party to allege “any ground or defense, whether affirmative or not, which, if not expressly stated in the pleading, would be likely to take the opposite party by surprise.” The government is directed to answer the affirmative defenses by March 1, 2022. Any objection the government interposed regarding the affirmative defenses may be made again in a motion for summary judgment, at trial, or in any other context.

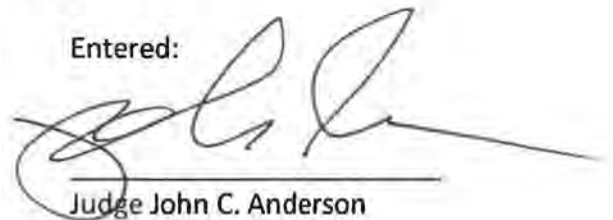
Case is set for status on February 14, 2022, at 9AM for purposes of entering a discovery schedule. Prior to that, the parties are directed to confer with one another in an effort construct an agreed schedule. When discovery is completed (or substantially completed), the Court will enter a briefing schedule on the motion to modify, with the parties directed to address the issues discussed herein.

If Aqua wishes to withdraw its motion, and if the parties wish to continue working toward an amicable resolution, the Court may be willing to reevaluate the directive to begin discovery.

The Court has transmitted a copy of this order to the parties via email.

Dated: January 25, 2022

Entered:



Judge John C. Anderson

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

EXHIBIT 5

ORDER ENTERED ON APRIL 28, 2022

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

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

Plaintiff, )

v. )

No. 19CH1208

AQUA ILLINOIS, INC., an Illinois )  
domestic corporation, )

Defendant. )

**ORDER**

This matter coming to be heard for status and for presentation of Defendant's Motion for Substitution of Counsel and Unopposed Motion to Extend Discovery Deadlines, each party appearing through counsel, and the Court being fully advised in the premises:

**IT IS HEREBY ORDERED THAT:**

1. The Defendant's Motion for Substitution of Counsel is granted.
2. Thompson Coburn LLP is granted leave to withdraw as counsel for Aqua Illinois, Inc., and its appearance is withdrawn.
3. ArentFox Schiff LLP is granted leave to substitute its appearance as counsel in this action for Aqua Illinois Inc.
4. The time for the parties to serve initial written discovery is extended through May 23, 2022.
5. The time for the parties to meet and confer upon a protocol for the production of electronically stored information ("ESI") is extended through May 25, 2022.

6. The time for the parties to produce documents responsive to their respective initial document requests is extended through August 22, 2022.
7. The time for the parties to serve their Rule 213(f)(1) witness disclosures is extended through September 21, 2022.
8. The time for the parties to complete all fact witness depositions is extended through October 31, 2022.
9. The time for the parties to complete written fact discovery is extended through October 31, 2022.
10. The time for the parties to serve their Rule 213(f)(2) and (3) witness disclosures is extended through November 30, 2022.
11. The time for the parties to complete depositions on any Rule 213(f)(2) and (3) witness is extended through January 30, 2023.
12. The time for parties to serve any expert rebuttal disclosure is extended through February 28, 2023.
13. The time for the parties to complete depositions of any rebuttal experts is extended through April 3, 2023.
14. This case is set for a status hearing on June 30, 2022 at 9:00 AM before Hon. Judge John C. Anderson in Courtroom 236A at the Will County Courthouse Annex at 57 N. Ottawa St., Joliet, IL 60423.



ENTERED:

Dated: APRIL 28, 2022

Judge



*Prepared By:*

Robert A.H. Middleton  
ARENTFOX SCHIFF LLP  
233 S. Wacker Drive, Ste. 7100  
Chicago, IL 60606  
Robert.Middleton@afslaw.com  
312-258-5875

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

EXHIBIT 6

SPECIAL EXCEPTION PERMIT



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))

Aqua IL University Park (IL1975030)

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

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2023-012
	)	(Permit Appeal - Public Water Supply)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NO. 6**

EXHIBIT 7

CONSTRUCTION PERMIT

**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

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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



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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 of 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.



Electronic Filing: Received, Clerk's Office 08/02/2022  
**Illinois Environmental Protection Agency**

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-1 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

Electronic Filing Received, Clerk's Office 08/02/2022  
**Instructions for Operating Permit Application**

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**