

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 8th 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. 3, 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, 18th 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
(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 Email)

CERTIFICATE OF SERVICE

I, Kathryn A. Pamenter, a Senior Assistant Attorney General, hereby certify that on the 8th 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. 3 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
69 W. Washington Street, 18th Floor
Chicago, IL 60602
773.590.7824
Kathryn.Pamenter@ilag.gov

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. 3**

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, 101.506,¹ and 105.108(e), hereby moves for the dismissal of Petitioner’s Permit Appeal as to Additional Condition No. 3 (the “Motion”). In support of the Motion, Respondent states as follows:

1. Section 105.108(e) of the Illinois Pollution Control Board’s (“Board”) 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(e).

2. Though factually distinguishable, in *ESG Watts, Inc. v. IEPA*, PCB 2000-160, slip. op. (Feb. 6, 2003), the Board recognized the standard regarding mootness:

A case becomes moot where the occurrence of events since filing of the appeal make it impossible for the reviewing court to render effectual relief. Balmoral Racing Club, Inc. v. Illinois Racing Board, 151 Ill.2d 367, 397, 603 N.E.2d 489 (1992). A court should not decide a case where the judgment would have only an advisory effect. [cite omitted] The court would have, in effect, rendered an advisory opinion where a decision on the merits cannot result in appropriate relief to the prevailing party. Berlin v. Sarah Bush Lincoln Health Center, 179 Ill.2d 1, 688 N.E.2d 106 (1997).

¹ “All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result.” 35 Ill. Adm. Code 101.506.

ESG Watts, slip op. at p. 5.

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

Optimal Water Quality Parameter (OWQP) ranges will be set after Optimal Corrosion Control Treatment (OCCT) is designated and the community water supply meets the lead action level in two consecutive six-month monitoring periods. The orthophosphate dose and residual shall be a minimum of 3 mg/L as PO₄. 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)

(Exhibit A at p. 2 (underlining in original).)

4. On July 8, 2022, Petitioner filed its Petition for Review of the Illinois Environmental Protection Agency’s Special Exception Permit Decision and Motion for Partial Stay (“Permit Appeal”). Pertinent to this Motion, Petitioner requests that “the Board remand the 2022 Permit to IEPA to require IEPA to set OWQP ranges.” (Permit Appeal at ¶ 34.)

5. On August 8, 2022, Illinois EPA issued a Special Exception Permit to Petitioner. (See Verification of David Cook, a true and correct copy of which is attached hereto as Exhibit B, at ¶ 3.) With Illinois EPA’s issuance of such permit, Illinois EPA must commence the process of setting Optimal Water Quality Parameter (OWQP) ranges for Petitioner’s University Park public water system. (*Id.* at ¶ 4.)

6. Because Petitioner’s requested relief as to Additional Condition No. 3 -- that the Board enter an order “requir[ing] IEPA to set OWQP ranges”, *supra* at Paragraph 4 -- is no longer necessary, the Permit Appeal as to Additional Condition No. 3 is moot. See, e.g., *GSF Energy, Inc. et al. v. IEPA*, PCB 90-219, slip. op. (Jan. 24, 1991).

WHEREFORE, Respondent respectfully requests that the Board enter an order (i) granting Respondent's Motion, (ii) dismissing the Permit Appeal as to Additional Condition No. 3 as moot, and (iii) granting such other relief as the Board deems appropriate.²

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, 18th Floor

Chicago, IL 60602

773.590.7824

312.881.0556

Kathryn.Pamenter@ilag.gov

AnnMarie.Hanohano@ilag.gov

² This Motion to Dismiss Permit Appeal as to Additional Condition No. 3 serves as additional support for Respondent's Motion for Extension of Time to File the Record filed on August 2, 2022.

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. 3**

EXHIBIT A

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 PO₄ 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 PO₄. 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))

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. 3**

EXHIBIT B

VERIFICATION OF DAVID COOK

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

VERIFICATION OF DAVID COOK

I, David Cook, do state as follows:

1. I am currently employed by the Illinois Environmental Protection Agency (“Illinois EPA”) in Springfield, Illinois as a Permit Section Manager in the Division of Public Water Supplies.
2. The duties and responsibilities of my current position include, but are not limited to, issuing Special Exception Permits to public water suppliers in Illinois.
3. A true and correct copy of the Special Exception Permit that Illinois EPA issued to Aqua Illinois, Inc. (“Aqua”) for its University Park public water system on August 8, 2022 is attached hereto as Exhibit 1.
4. With Illinois EPA’s issuance of such permit, Illinois EPA must commence the process of setting Optimal Water Quality Parameter (OWQP) ranges for Aqua’s University Park public water system.
5. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters

the undersigned certifies as aforesaid that he verily believes the same to be true.



David Cook
Illinois Environmental Protection Agency

DATED: August 8, 2022

EXHIBIT 1



217/782-1724

SPECIAL EXCEPTION PERMIT

August 8, 2022

Mr. David Carter, President
Aqua Illinois Water Company
1000 S. Schuyler Ave.
Kankakee, IL 60901

Re: Aqua Illinois – University Park, IL1975030
Lead and Copper Rules
Optimal Corrosion Control Treatment Recommendation
Log number 2020-0568

Dear Mr. Carter:

The Illinois Environmental Protection Agency (Agency) approves the Optimal Corrosion Control Treatment (OCCT) recommendation of zinc orthophosphate for the Aqua Illinois – University Park community water supply. The recommendation was signed by Melissa Kahoun, Aqua Illinois' Environmental Compliance Manager, on February 14, 2022, emailed on February 15, 2022, and hard copy received on February 17, 2022. The OCCT recommendation was in response to a January – June 2019 compliance period lead action level exceedance. This Special Exception Permit (SEP) is issued pursuant to 35 Ill. Adm. Code 602.600, 611.351(a)(2), 611.352(d), and 611.351(e).

A construction permit for the zinc orthophosphate was issued on July 30, 2021. An operating permit for the zinc orthophosphate was issued on August 3, 2021.

The Agency's decision to approve the OCCT recommendation was based upon the following information.

As a result of the January – June 2019 compliance period lead action level exceedance a switch in blended phosphates was made on or about June 15, 2019 to a "90/10 ortho/poly" blended phosphate. On December 2, 2019 the Agency received an OCCT recommendation and corrosion control study report from Aqua for this "90/10 ortho/poly" blended phosphate.

On March 24, 2020 a technical presentation was made to the Agency and US EPA staff regarding the need for better pH control to aid the orthophosphate corrosion control treatment. On April 22, 2020 the Agency issued a SEP requiring additional corrosion control studies pursuant to 35 Ill. Adm. Code 611.351(e)(2) and 611.351(b) before it could approve OCCT. To

Aqua Illinois – University Park, IL1975030
Lead and Copper Rules
Optimal Corrosion Control Treatment Recommendation
Log number 2020-0568
Page 2

control pH, a construction permit, 1020-FY2020, was issued for phosphoric acid on April 17, 2020 with the operating permit issued on April 28, 2020.

On August 10, 2020 Aqua submitted a revised OCCT recommendation and updated corrosion control evaluation with additional information submitted on September 15, 2020 and the final information received on December 14, 2020.

Pursuant to 35 Ill. Adm. Code 611.351(c) and 611.351(e), on June 14, 2021 the Agency issued a SEP requiring additional studies, information, and data before it could approve OCCT. Additional information was received from Aqua on September 10, 2021 and a final OCCT recommendation was received on February 17, 2022. Therefore, the Agency had six months from when all the information was received or until August 17, 2022 to approve the OCCT recommendation pursuant to 35 Ill. Adm. Code 611.351(e).

According to 35 Ill. Adm. Code 611.350, OCCT means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

Optimal Water Quality Parameters (OWQPs) including the minimum orthophosphate concentration and pH range will be set in a separate Special Exception Permit.

The Agency will continue to monitor the effectiveness of the Optimal Corrosion Control Treatment and may require Aqua to repeat treatment steps if the Agency determines that it is necessary to properly implement the treatment requirements of the Lead and Copper Rule pursuant to 35 Ill. Adm. Code 611.351(c)(3) or future Lead and Copper Rule revisions.

Sincerely,



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

cc: Melissa Kahoun, Aqua
DPWS/FOS - Elgin Regional Office