

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To:	Kathryn A. Pamerter Senior Assistant Attorney General Environmental Bureau Office of the Illinois Attorney General 69 W. Washington St., 18th Floor Chicago, IL 60602 Kathryn.Pamerter@ilag.gov	Don Brown Clerk of the Board Illinois Pollution Control Board 60 E. Van Buren St., Suite 630 Chicago, IL 60605 Don.Brown@illinois.gov
	Ann Marie A. Hanohano Assistant Attorney General Environmental Bureau Office of the Illinois Attorney General 69 W. Washington St., 18th Floor Chicago, IL 60602 AnnMarie.Hanohano@ilag.gov	Brad Halloran Hearing Officer Illinois Pollution Control Board 60 E. Van Buren St., Suite 630 Chicago, IL 60605 Brad.Halloran@illinois.gov

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **PETITIONER'S MOTION TO VOLUNTARILY WITHDRAW PETITION FOR REVIEW AS TO ADDITIONAL CONDITION NO. 3** and **CERTIFICATE OF SERVICE**, copies are which are herewith served upon you.

Dated: August 12, 2022

/s/ Sarah L. Lode
One of its Attorneys

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PROTECTION AGENCY,)	
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**PETITIONER’S MOTION TO VOLUNTARILY WITHDRAW
PETITION FOR REVIEW AS TO ADDITIONAL CONDITION NO. 3**

Petitioner Aqua Illinois, Inc. (“Aqua”), by and through its counsel, ArentFox Schiff, LLP, voluntarily moves to withdraw claims of the Petition for Review of an Illinois Environmental Protection Agency’s Special Exception Permit Decision and Motion for Partial Stay (“Petition for Review”) solely as to Additional Condition No. 3 of the Special Exception Permit issued on June 29, 2022 (the “2022 Permit”) by the Illinois Environmental Protection Agency (“IEPA”).¹ In further support of this Motion, Aqua states as follows:

1. On June 29, 2022, IEPA issued the 2022 Permit to Aqua. In doing so, IEPA revised Additional Condition No. 3 of a prior permit to state that Optimal Water Quality Parameter (“OWQP”) ranges would be set “after Optimal Corrosion Control Treatment (OCCT) is designated” (Exhibit A to Petition for Review, 2022 Permit, at p. 2 ¶ 3).

2. On July 8, 2022, Aqua filed its Petition for Review. Among other aspects of the 2022 Permit, Aqua’s Petition for Review contested Additional Condition No. 3 because there is

¹ This Motion does not concern or affect the Petition for Review as to IEPA’s denial of the request to modify Additional Condition No. 6, which is stated in the final paragraph of the 2022 Permit, or Aqua’s requested relief as to Additional Condition Nos. 4 and 5 of the 2022 Permit.

no legal basis to require the “designation” of OCCT as a prerequisite for IEPA’s setting of OWQP ranges. (*See* Petition for Review at ¶¶ 28-34). Aqua requested that the Illinois Pollution Control Board (the “Board”) remand the 2022 Permit to IEPA to require IEPA to set OWQP ranges. (*See id.* at ¶ 34).

3. On August 8, 2022, IEPA issued a Special Exception Permit to Aqua that approved the OCCT recommendation for the Aqua Illinois-University Park public water system. A copy of the August 8 Special Exception Permit is attached hereto as Exhibit A.

4. On August 11, 2022, IEPA confirmed to Aqua that the new requirement added to Additional Condition No. 3 by the 2022 Permit—*i.e.*, the “designation” of OCCT as a prerequisite for IEPA’s setting of OWQP ranges—has been satisfied by the August 8 Special Exception Permit. As the new requisite of Additional Condition No. 3 has been satisfied, Aqua voluntarily moves to withdraw the Petition for Review solely as to Additional Condition No. 3. Aqua respectfully submits that IEPA’s August 8, 2022, Motion to Dismiss the Permit Appeal as to Additional Condition No. 3 is now moot.

For the foregoing reasons, Aqua respectfully requests that the Board grant Petitioner’s Motion to Voluntarily Withdraw Petition for Review as to Additional Condition No. 3 and grant such other relief as the Board deems appropriate.

Respectfully submitted,

Aqua Illinois, Inc.

Dated: August 12, 2022

/s/ Daniel J. Deeb
One of its Attorneys

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Attorneys for Aqua Illinois, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 12th day of August, 2022:

I have electronically served a true and correct copy of Petitioner's Motion to Voluntarily Withdraw Petition for Review and Motion for Partial Stay as to Additional Condition No. 3, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

To: Kathryn A. Pamenter Senior Assistant Attorney General Environmental Bureau Office of the Illinois Attorney General 69 W. Washington St., 18th Floor Chicago, IL 60602 Kathryn.Pamenter@ilag.gov	Don Brown Clerk of the Board Illinois Pollution Control Board 60 E. Van Buren St., Suite 630 Chicago, IL 60605 Don.Brown@illinois.gov
Ann Marie A. Hanohano Assistant Attorney General Environmental Bureau Office of the Illinois Attorney General 69 W. Washington St., 18th Floor Chicago, IL 60602 AnnMarie.Hanohano@ilag.gov	Brad Halloran Hearing Officer Illinois Pollution Control Board 60 E. Van Buren St., Suite 630 Chicago, IL 60605 Brad.Halloran@illinois.gov

My e-mail address is Sarah.Lode@afslaw.com.

The number of pages in the e-mail transmission is 9.

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

/s/ Sarah L. Lode

Sarah L. Lode

Dated: August 12, 2022

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Attorneys for Aqua Illinois, Inc.

EXHIBIT A



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

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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