

ILLINOIS POLLUTION CONTROL BOARD

AQUA ILLINOIS, INC., )  
Petitioner, )  
vs. ) No. PCB 23-12  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Defendant. )

REPORT OF THE PROCEEDINGS held in the  
above-entitled cause before Hearing Officer  
BRAD HALLORAN, taken by Raelene Stamm, CSR,  
Certified Shorthand Reporter licensed by the State  
of Illinois, 100 West Randolph Street, Chicago,  
Illinois, on the 28th day of September, 2022,  
commencing at the hour of 9:00 a.m.

Reported By: Raelene Stamm, CSR

License No.: 084-004445

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APPEARANCES:

ARENT FOX SCHIFF, LLP

BY: MR. DANIEL J. DEEB

MR. ALEX GAREL-FRANTZEN

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On behalf of the Petitioner;

OFFICE OF THE ATTORNEY GENERAL

BY: MS. KATHRYN PAMENTER

MS. ANN MARIE HANOHANO

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On behalf of the Respondent.

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ALSO PRESENT:

MS. ESSENCE BROWN, IPCB Scientist

MS. CHLOE SALK, IPCB Staff Attorney

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I N D E X

WITNESS

EXAMINATION

DAVID COOK

By Ms. Pamentor

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By Mr. Cook

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1 HEARING OFFICER HALLORAN: Good morning. We're  
2 on the record. My name is Bradley Halloran. Today  
3 is September 28, 2022, approximately 9:00, 9:05.  
4 I'm the hearing officer assigned to this matter.  
5 It's entitled, Aqua Illinois, Inc., Petitioner,  
6 versus the Illinois Environmental Protection  
7 Agency, Respondent. It's docketed as PCB 23-12.  
8 It's a permit appeal involving water.

9 I don't make the final determination in  
10 this matter. I just collect everything, the  
11 transcript, the posthearing briefs; and I bring it  
12 over to the five members of the Board, and they  
13 decide.

14 This petition was accepted on July 21,  
15 2022. It consisted of a number of contested  
16 conditions, but the last man standing is Condition  
17 Number 6, and that's why we're here today. I want  
18 to note, too, for the record that we have one of  
19 our scientists with us, Essence Brown, and we have  
20 Chloe Salk in the background as staff attorney.  
21 Thank you. Carly Leone should be coming soon. Her  
22 train was late.

23 In any event, yesterday late afternoon  
24 petitioners filed a motion in limine. At present I

1 can't find it yet, but Mr. Deeb and especially  
2 petitioners and respondents, before I go any  
3 farther, would you like to introduce yourselves?

4 MR. DEEB: My name is Dan Deeb, D-e-e-b, with  
5 Arent Fox Schiff for petitioners.

6 MR. GAREL-FRANTZEN: My name is Alex  
7 Garel-Frantzen from Arent Fox Schiff for  
8 petitioner.

9 MS. PAMENTER: Good morning, Katherine Pamenter  
10 with the Illinois Attorney General's Office on  
11 behalf of the respondent, the Illinois  
12 Environmental Protection Agency.

13 MR. GRANT: And I am Christopher Grant,  
14 G-r-a-n-t, with the Illinois Attorney General's  
15 Office, also for respondent.

16 MS. HANOHANO: My name is Ann Marie Hanohano,  
17 H-a-n-o-h-a-n-o, also for respondent.

18 HEARING OFFICER HALLORAN: Thanks, thanks all.

19 Again, there was a motion in limine filed  
20 by petitioner late afternoon, and I really -- I  
21 don't have a hard copy, but, Mr. Deeb, would you  
22 like to address that, please?

23 MR. DEEB: Yes. Thank you, Hearing Officer.  
24 Our motion in limine seeks to limit the use of two

1 documents that were submitted in to the record that  
2 was amended and filed last Friday afternoon. Those  
3 materials were not in the record when it was  
4 previously submitted to -- well, submitted to the  
5 Board and to us in August.

6           Importantly, those prior record  
7 submissions were couched by respondent as being  
8 complete as to additional Condition 6. The hearing  
9 officer responded a couple weeks ago, and I  
10 requested that a complete record as to all  
11 conditions be submitted. And the filing last  
12 Friday I believe was the respondent's attempt to  
13 satisfy that order of the hearing officer.

14           Respondent -- excuse me.

15           Petitioner has no objection whatsoever to  
16 the inclusion of those additional information in  
17 the record. However, given the way that they --  
18 that the record was presented as to Condition 6  
19 earlier, our request is that the respondent not be  
20 permitted to use those two additional record  
21 documents for, which we've called in the motion the  
22 nitrate documents, for purpose of additional  
23 Condition 6.

24           We have -- we acted in discovery in

1 reliance on the complete record being provided in  
2 August and have not had an opportunity to depose  
3 any of the witnesses or those involved regarding  
4 those documents, nor have we -- did we have time to  
5 prepare any rebuttal testimony to address those  
6 documents.

7           Therefore, we -- and the last point I'll  
8 make as stated in the motion is that the basis of  
9 the denial of our request to modify Condition 6 as  
10 stated in the permit has nothing to do with the  
11 nitrate documents. The basis was stated to be  
12 respondent's reading of the interim agreed order.

13           HEARING OFFICER HALLORAN: So you have no  
14 objection to those my nitrate documents, the  
15 additional documents being included in the record;  
16 but no comments or reference in the event there is  
17 a witness up here either now or in a posthearing  
18 brief?

19           MR. DEEB: Yes, sir.

20           HEARING OFFICER HALLORAN: Thank you.

21           State? Miss Pamerter?

22           MS. PAMENTER: Yes. Katherine Pamerter for the  
23 respondent responding. Your Honor, with respect to  
24 the documents at issue in the motion in limine, as



1 you may recall an order was entered on  
2 September 19, 2022, that required the respondent to  
3 submit all the documents even those relating to  
4 additional conditions that had been withdrawn in  
5 pleadings by the petitioner.

6 HEARING OFFICER HALLORAN: Well, yeah, I did  
7 based on the procedural rules.

8 MS. PAMENTER: Understood.

9 HEARING OFFICER HALLORAN: Proceed.

10 MS. PAMENTER: Thereafter, on September 21,  
11 2022, Mr. Cook's deposition took place, and during  
12 that deposition questions were asked by the  
13 petitioner that elicited the information with  
14 respect to the nitrate data. We felt that if we  
15 had excluded those from the record, that we were  
16 required to file in September 23, 2022. We submit  
17 that we may be here on a motion to have them  
18 included, and as such we did, in fact, include them  
19 in the record in support -- in accordance with the  
20 September 19 order and as a result of the  
21 questioning during the depositions that occurred.

22 At this time we do not know if we will  
23 need to even utilize those documents until we hear  
24 what the case in chief is that is presented, and as

1 such we would reserve the ability to ask questions  
2 depending upon what case in chief is presented.  
3 But at this point in time we do not intend to  
4 utilize those documents should we have to call a  
5 witness in this matter.

6 HEARING OFFICER HALLORAN: Mr. Deeb, any  
7 rebuttal?

8 MR. DEEB: The record that was submitted in  
9 August as to Condition 6 should have included those  
10 documents if they were, in fact, the basis for the  
11 permit decision, and to us it is as simple as that.  
12 To attempt to provide them in the record as to  
13 additional Condition 6 at this late date is simply  
14 inappropriate.

15 However, you know, if they're not  
16 objecting, I'm not sure exactly what -- well, I'm  
17 not sure where that leaves us. Our case in chief  
18 will be presented and the posthearing briefs. We  
19 do not intend to call any witnesses today.

20 HEARING OFFICER HALLORAN: Thank you, Mr. Deeb.

21 I'm gonna deny the motion in limine. And  
22 if you really don't like my decision, you can  
23 appeal that, too, with the Board, and we'll take it  
24 with the case. And, I mean, if it was, I think,

1 that imperative, I think we could have filed  
2 another extension of the waiver decision deadline  
3 and possibly kicked the hearing out farther.

4 In any event, the motion is denied. I'm  
5 gonna give Aqua -- it's your case in chief. I  
6 think you've just explained what's gonna happen.  
7 Could you explain again for the record? Any  
8 opening, an outline or just you're gonna rest and  
9 submit your arguments in the posthearing brief?

10 MR. DEEB: Thank you, Hearing Officer. I don't  
11 believe that any background is necessary. As you  
12 know, the Board has considered recently the motion  
13 to dismiss as to additional Condition 6, and,  
14 therefore, I think is well familiar with the  
15 background and the arguments at issue.

16 In large part, because of the basis of  
17 that motion to dismiss decision that was issued  
18 last week, we decided that it is not necessary to  
19 call any witnesses. And, therefore, we will not  
20 present any evidence today and will simply proceed  
21 to posthearing briefly.

22 HEARING OFFICER HALLORAN: All right. Thank  
23 you. So you rest your case.

24 Miss Pamenter?

1 MS. PAMENTER: Yes, if I may confer one moment.

2 (WHEREUPON, a discussion was had  
3 off the record.)

4 MS. PAMENTER: So, Judge Halloran, in light of  
5 what has been indicated here we do intend to  
6 present a witness. We would ask for just a very  
7 brief break to get the witness in the room and  
8 situated so that we can proceed.

9 HEARING OFFICER HALLORAN: Okay.

10 MR. GRANT: Sorry.

11 HEARING OFFICER HALLORAN: You're fine. We're  
12 off the record.

13 (WHEREUPON, a short recess was  
14 taken.)

15 HEARING OFFICER HALLORAN: All right. We're  
16 back. Respondent, Miss Pamenter.

17 MS. PAMENTER: Thank you. Yes, we are prepared  
18 to proceed with respondent's case in chief. We do  
19 have one preliminary matter with which Mr. Grant  
20 will be handling this morning.

21 MR. GRANT: Mr. Halloran, we're gonna ask the  
22 Board to take public notice of the complaint and  
23 answer in the enforcement case which we have  
24 pending in Circuit Court of Will County. Public

1 notice, judicial notice, sorry, you have a copy.

2 HEARING OFFICER HALLORAN: Does Mr. -- does  
3 Aqua have a copy?

4 MR. DEEB: Yes, we do.

5 HEARING OFFICER HALLORAN: Okay. I'll take it  
6 to the Board hearing officer, Exhibit A.

7 MR. DEEB: Hearing Officer, for the record Aqua  
8 objects. We think this continues to conflate the  
9 enforcement action with the permit appeal.

10 HEARING OFFICER HALLORAN: Mr. Grant?

11 MR. GRANT: First, this is a sort of document  
12 that is routinely given judicial notice to. And,  
13 second, it relates directly to the interim  
14 administrative order that's in the record. It has  
15 been in the record and was used in depositions and  
16 is referenced in the condition permit itself.

17 So without having the underlying facts and  
18 the admissions by Aqua in their answer to the  
19 complaint, I think the Board is missing some pretty  
20 important information. And there's no question as  
21 to the authenticity of this.

22 HEARING OFFICER HALLORAN: Yeah. I'm very  
23 hesitant to accept it because it is an enforcement  
24 matter, and this is not an enforcement matter. You

1 know, it's a pretty close call, but I think the  
2 Board can use it for background since it's referred  
3 to in the interim order that's in the record. So  
4 I'll accept it.

5 And, Petitioners, feel free to state your  
6 objection in your interlocutory appeal.

7 MR. DEEB: Thank you.

8 HEARING OFFICER HALLORAN: Miss Pamentor, your  
9 witness.

10 MS. PAMENTER: Before we begin with our exam,  
11 apologies, sir, we do have a brief opening  
12 statement, if we may present that.

13 HEARING OFFICER HALLORAN: Oh, sorry. Sure.

14 MS. PAMENTER: Thank you.

15 MS. HANOANO: This dispute originated from the  
16 significant levels observed in drinking water in  
17 University Park. The Village of University Park is  
18 located in an environmental justice area.  
19 Aqua Illinois is the owner and operator that  
20 provides water service to the Village of University  
21 Park.

22 The USEPA has set 15 micrograms per liter  
23 as the action level for lead in drinking water. In  
24 late May 2019, water testing on homes within

1 University Park showed lead levels as high as  
2 1,700 micrograms per liter. Now, that's more than  
3 113 times the lead action level. These exceedances  
4 raise serious concerns over whether the water in  
5 University Park was assuredly safe.

6           Thereafter, an enforcement case was filed  
7 in Will County Circuit Court against Aqua regarding  
8 these elevated lead levels. Following the filing  
9 of the case, the parties negotiated an agreed  
10 interim order that has governed Aqua's University  
11 Park public water supply since November 1, 2019.  
12 Specific to this permit appeal, the agreed interim  
13 order required Aqua to conduct lead compliance  
14 sampling on a monthly basis. In March 2022 Aqua  
15 submitted to IEPA two letters seeking the  
16 elimination of the monthly sampling requirement.

17           As of the date of the issuance of the  
18 June 29, 2022, permit, Aqua has not provided  
19 sufficient justification for its request. For  
20 example, Aqua had not met the lead action level for  
21 two consecutive six-month sampling periods.

22           In addition, as you will hear from  
23 Mr. David Cook shortly, consultants retained by  
24 Aqua in 2021 pointed to the issue of nitrate in the

1 water supply from the Kankakee River as a  
2 significant factor in increasing lead levels. As  
3 of June 29, 2022, Aqua had not provided sampling  
4 data regarding the nitrate issue.

5 Section 105.12 provides that the burden of  
6 proof shall be on the petitioner. The record and  
7 testimony to be presented today will show that Aqua  
8 did not satisfy its burden of showing that the  
9 application as submitted to IEPA demonstrated that  
10 no violation of the Environmental Protection Act or  
11 Board regulations would have occurred if the  
12 monthly sampling requirement had been eliminated as  
13 requested. Thank you.

14 HEARING OFFICER HALLORAN: Thank you.

15 Miss Pamerter?

16 MS. PAMENTER: Yes. On behalf of the  
17 respondent, Illinois Environmental Protection  
18 Agency, we call David Cook.

19 HEARING OFFICER HALLORAN: Mr. Cook, you can  
20 come up here.

21 (WHEREUPON, the witness was  
22 duly sworn.)

23 MR. DEEB: May I proceed?

24 HEARING OFFICER HALLORAN: Yes, you may.



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DAVID COOK,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. PAMENTER:

**Q. Please state your name and for the record spell your last name.**

A. David Cook, C-o-o-k.

**Q. Mr. Cook, I'd like to walk through a little bit of your background if we may. Let's start with your education. You have a bachelor of science in mechanical engineering from the University of Illinois; is that correct?**

A. Yes.

**Q. And what year did you obtain that?**

A. 1989.

**Q. Do you hold any other degrees?**

A. No.

**Q. Do you have any certifications or licenses?**

A. I'm a licensed professional engineer in the state of Illinois.

**Q. Any other certifications or licenses?**

A. No.

1 Q. Following graduation you went to work with  
2 the Illinois Environmental Protection Agency; is  
3 that correct?

4 A. Yes.

5 Q. In a particular division?

6 A. The division of public water supplies.

7 Q. In what year was that?

8 A. 1990.

9 Q. When you joined the agency in the division  
10 of public water supplies, what was your role?

11 A. I was an environmental protection engineer  
12 and worked in the permit section reviewing  
13 construction -- applications for construction  
14 permit.

15 Q. How long did you serve in that capacity?

16 A. 12 years.

17 Q. So do I have it correct, 1990 to 2002  
18 then?

19 A. Yes.

20 Q. Okay. You indicated that you reviewed  
21 construction permit applications in your capacity  
22 as an environmental protection engineer between  
23 those years. In accordance with that did you  
24 prepare drafts of construction permits?

1           A.    Yes.

2           Q.    Did you make determinations to approve or  
3 disapprove construction permit applications during  
4 that time?

5           A.    Yes.

6           Q.    Did you sign the construction permits that  
7 you prepared in that capacity during the 1990 to  
8 2002 time period?

9           A.    No.

10          Q.    Approximately how many construction permit  
11 applications did you review during the 1990 to 2002  
12 time period?

13          A.    Over 5,000.

14          Q.    And just to be clear, were these all with  
15 respect to public water supply construction permit  
16 applications or did you work on other types of  
17 media, land or air during this time period?

18          A.    Just community water supply improvements.

19          Q.    Did you review other types of permits  
20 between 1990 and 2002 in your capacity as an  
21 environmental protection engineer?

22          A.    Yes.  In accordance with the Safe Drinking  
23 Water Act requirements, we -- I reviewed coliform  
24 sample site plans, groundwater under the direct

1 influence and activation methodologies for the  
2 service water treatment rule and drafted special  
3 exception permits.

4 Q. So the list that you just gave us, those  
5 are a different type of application from a  
6 construction permit application?

7 A. Yes. It's not construction. It's a  
8 determination by the agency that the system was in  
9 compliance with the Safe Drinking Water Act  
10 requirements.

11 Q. For purposes of your testimony today, the  
12 list that you just gave us, can we refer to those  
13 as special exception permits just for ease of not  
14 having to go through the list each time?

15 A. Yes.

16 Q. Did you review -- so you reviewed special  
17 exception permit applications in your capacity as  
18 an environmental protection engineer between 1990  
19 and 2002, correct?

20 A. Yes.

21 Q. Did you prepare drafts of special  
22 exception permits during that time frame?

23 A. Yes.

24 Q. Did you make determinations to approve or

1 disapprove special exception permit applications  
2 during that time frame?

3 A. Yes.

4 Q. Did you sign the special exception permits  
5 that you drafted in your capacity as an  
6 environmental protection engineer between 1990 and  
7 2002?

8 A. No.

9 Q. Approximately how many special exception  
10 permit applications did you review during the 1990  
11 to 2002 time period?

12 A. With all of the sample site plans it would  
13 have been over a thousand.

14 Q. Now, you testified that you did not sign  
15 the construction permits or the special exception  
16 permits that you drafted. In general, who would  
17 have signed those?

18 A. The permit section manager. The coliform  
19 sample site plans might have been signed by the  
20 compliance manager. I don't recall.

21 Q. Are you familiar with the term, operating  
22 permit application?

23 A. Yes.

24 Q. What's the difference between a

1 **construction permit application, a special**  
2 **exception permit application and an operating**  
3 **permit application?**

4 A. So construction permit application is for  
5 improvements -- construction of improvements to a  
6 community water supply. When that construction is  
7 complete, then the applicant -- the community water  
8 supply applies for an operating permit.

9 Special exception permits are just  
10 determinations by the agency that a system is  
11 meeting a provision -- the requirements of the Safe  
12 Drinking Water Act adopted by Illinois in Title 35  
13 and doesn't involve construction.

14 **Q. In your capacity as an environmental**  
15 **protection engineer between 1990 and 2002 did you**  
16 **review operating permit applications?**

17 A. No.

18 **Q. Did you prepare any drafts?**

19 A. No.

20 **Q. Where did you work after 2002?**

21 A. In June of 2002 I stayed within the  
22 division of public water supplies and moved to  
23 field operations section. I was the manager of the  
24 Springfield regional office.

1           **Q.    How long did you serve as a manager in the**  
2 **Springfield regional office in the field operations**  
3 **section?**

4           A.    From 2002 to approximately 2016.

5           **Q.    And you indicated that as a field**  
6 **operations section manager, just to clarify, that's**  
7 **still in the public water supply division; is that**  
8 **correct?**

9           A.    Yes.

10          **Q.    Generally, what were your duties and**  
11 **responsibilities as a manager of the field**  
12 **operations section in the Springfield regional**  
13 **office?**

14          A.    I supervised a staff of three  
15 environmental protection engineers, and together we  
16 conducted sanitary surveys of community water  
17 supplies. And they wrote inspection reports of  
18 those sanitary surveys which I signed as the  
19 manager in the area. Springfield region covers  
20 22 counties in West Central Illinois.

21          **Q.    Did you do any permitting work while you**  
22 **were in the field operations section as a manager?**

23          A.    No.

24          **Q.    So you testified that you were a manager**

1 of the field operations section in the Springfield  
2 regional office between 2002 and 2016. Did you  
3 hold any other roles during that time period for  
4 the Illinois Environmental Protection Agency?

5 A. Yeah. From 2012 to 2016 I had a dual  
6 role. I was also acting permit section manager  
7 after the retirement of the previous permit section  
8 manager still within the division of public water  
9 supplies.

10 Q. Are you still serving as a manager of the  
11 permit section today?

12 A. Yes.

13 Q. What are your general duties and  
14 responsibilities as the manager of the permit  
15 section within the division of public water  
16 supplies for the Illinois Environmental Protection  
17 Agency?

18 A. I supervise a staff of seven engineers  
19 currently who prepare, review applications for  
20 construction permit and special exception permit  
21 determinations in support of the Safe Drinking  
22 Water Act requirements; and together they draft  
23 approvals or denials for those applications, and  
24 then I review their work and sign.



1           **Q.    Approximately how many people do you**  
2 **oversee or supervise as the manager of the permit**  
3 **section within the division of public water**  
4 **supplies?**

5                   **Approximately is fine.**

6           **A.    There's seven engineers.  There's one**  
7 **GIS tech, and then there's two engineers from the**  
8 **field operations section that are part-time**  
9 **assigned to the permit section to help.**

10           **Q.    As the manager of the permit section in**  
11 **the division of public water supplies, what has**  
12 **been your involvement in public water supply**  
13 **construction permit applications?**

14           **A.    Could you repeat that?**

15           **Q.    As the manager of the permit section in**  
16 **the division of public water supplies, what has**  
17 **been your involvement with public water supply**  
18 **construction permit applications?**

19           **A.    Again, the staff reviews the applications**  
20 **for construction permits and prepares drafts,**  
21 **permits or denials which I then review and sign.**

22           **Q.    In your capacity as a permit manager, do**  
23 **you ever draft construction permit applications --**  
24 **excuse me, strike that.**

1           In your capacity as a permit manager do  
2 you ever draft construction permits?

3           A.    Yes.

4           Q.    Approximately how many have you worked on  
5 in your capacity as a permit manager?

6           A.    Permits, approximately a hundred in the  
7 last ten years.

8           Q.    In that same capacity as the permit  
9 manager, do you sign all of the public water supply  
10 construction permit applications even if you do not  
11 draft them?

12          A.    Yes.

13          Q.    As the manager of the permit section in  
14 the division of public water supplies what is your  
15 involvement in public water supply operating permit  
16 applications?

17          A.    Our staff reviews the applications for  
18 operating permits that are submitted by community  
19 water supply after construction is completed and  
20 prepares a checklist when they're ready for  
21 approval and gives them to me for signature.

22          Q.    Approximately how many public water supply  
23 operating permits have you drafted in your capacity  
24 as the manager of the permit section in the

1 **division of public water supplies?**

2 A. So the application is filled out by the  
3 community water supplies, so there really isn't a  
4 drafting process, but I sign approximately  
5 1300 operating permits per year.

6 **Q. As the manager of the permit section in**  
7 **the division of public water supplies, what is your**  
8 **involvement in public water supply special**  
9 **exception permit applications?**

10 A. The permit section reviews community water  
11 supply requests to comply with Safe Drinking Water  
12 Act requirements and prepares special exception  
13 permits in support of those determinations.

14 **Q. In your capacity as the manager of the**  
15 **permit section in the division of public water**  
16 **supplies, have you ever drafted special exception**  
17 **permits?**

18 A. Yes.

19 **Q. Approximately how many?**

20 A. In the last 10 years, approximately 50.

21 **Q. Do you sign the special exception permits**  
22 **that are created through the division of public**  
23 **water supplies regardless of whether you draft**  
24 **them?**

1 A. Within the permit section, yes.

2 Q. Are you familiar with Aqua Illinois, Inc.?

3 A. Yes.

4 Q. How?

5 A. Aqua owns and operates several community  
6 water supplies in the state of Illinois.

7 Q. With respect to the this particular  
8 matter, what is Aqua Illinois's interest or what is  
9 its involvement, to your knowledge?

10 A. Could you repeat that?

11 Q. Sure.

12 Does Aqua Illinois provide drinking water  
13 to University Park in Illinois?

14 A. Yes.

15 Q. Do you know the source of the water that  
16 Aqua provides to the residents in University Park?

17 A. Currently it's treated water from the  
18 Kankakee water system.

19 Q. Was it always that case?

20 A. Prior to -- prior to 2017, it was from  
21 wells, two wells, and University Park.

22 Q. In 2017 Aqua switched the source of the  
23 water from groundwater wells to the Kankakee River?

24 A. Yeah, I don't -- I don't recall the exact

1 date, but yeah, approximately then.

2 **Q. Are you familiar with the term, the Lead**  
3 **and Copper Rule?**

4 A. Yes.

5 **Q. Generally what is that?**

6 A. The Lead and Copper Rule is a Safe  
7 Drinking Water Act requirement that has been  
8 adopted and identical by the State of Illinois in  
9 Illinois Administrative Code Title 35. The Lead  
10 and Copper Rule seeks to use corrosion control  
11 treatment to minimize lead and copper levels in  
12 community water supplies and the homes that they're  
13 served by them.

14 **Q. So public water suppliers in Illinois need**  
15 **to comply with the state Lead and Copper Rule.**

16 **Am I understanding that correctly?**

17 A. Yes.

18 **Q. And does that include Aqua with regard to**  
19 **its University Park public water system?**

20 A. Yes.

21 **Q. You mentioned the term, corrosion control**  
22 **treatment, if I heard you correctly?**

23 A. Yes.

24 **Q. You gave us a general understanding of**

1 your -- excuse me, strike that.

2 You gave us your general understanding of  
3 that term. Is there a definition in the Lead and  
4 Copper Rule for corrosion control treatment or  
5 optimal corrosion control treatment?

6 A. Yes. Optimal -- there is a definition,  
7 and optimal corrosion control is when they're in  
8 compliance with the action level.

9 Q. In general, do public water suppliers  
10 utilize corrosion control treatment in their  
11 systems?

12 A. Yes.

13 Q. In general, why?

14 A. To minimize lead and copper levels in  
15 plumbing systems served by their community water  
16 supply.

17 Q. In general, who would determine what  
18 corrosion control treatment should be utilized for  
19 a particular public water system?

20 A. The community water supply and their  
21 consultants.

22 Q. Is it the Illinois Environmental  
23 Protection Agency who initially makes that  
24 determination?

1 A. No.

2 Q. Has Aqua needed to utilize corrosion  
3 control treatment in its University Park public  
4 water supply?

5 A. Yes.

6 Q. You testified previously that Aqua  
7 switched the source of its water from groundwater  
8 wells to the Kankakee River. Following that switch  
9 did Aqua utilize a particular corrosion control  
10 treatment in its University Park public water  
11 supply?

12 A. Could you repeat the question?

13 Q. Sure. You testified thus far -- and let  
14 me just if I may, if you need a break or if you  
15 need some water, please let us know. I should have  
16 mentioned that at the beginning.

17 You testified previously that Aqua  
18 switched the source of its water from groundwater  
19 wells to the Kankakee River. Upon making that  
20 switch, did Aqua utilize a particular corrosion  
21 control treatment for its public water system?

22 A. Aqua fed a blended phosphate in a C class  
23 that was -- had a dual purpose of corrosion control  
24 and sequestration of iron.

1           **Q. Are you familiar with the term, action**  
2 **level for lead in drinking water?**

3           A. Yes.

4           **Q. What is your understanding of that term?**

5           A. The action level is the level that when  
6 it's exceeded -- when the 90th percentile of  
7 samples collected in a monitoring period exceed the  
8 action level number, that triggers corrosion  
9 control steps.

10          **Q. What is the action level for lead?**

11          A. 15 micrograms per liter.

12          **Q. Sometimes I think the phrase that's also**  
13 **used, milligrams per liter; is that correct?**

14          A. Yes.

15          **Q. And the difference between micrograms per**  
16 **liter and milligrams per liter, just for the**  
17 **record, would that be for milligrams per liter is**  
18 **0.015, and micrograms per liter would be 15?**

19          A. Yes.

20          **Q. Do I have that right?**

21          A. That's correct.

22          **Q. Is a public water supplier required to**  
23 **conduct sampling of water in its system for lead?**

24          A. Yes.



1           **Q. Do a certain -- in general, do a certain**  
2 **number of samples need to be collected?**

3           A. Yes. The samples are specified in  
4 regulation based on population.

5           **Q. In general, are there time periods within**  
6 **which public water suppliers need to collect the**  
7 **samples to test for lead?**

8           A. Yes. There's three -- the standard  
9 monitoring is every six months, and then reduced  
10 monitoring is annually or triannually, every three  
11 years.

12           **Q. After the samples are collected, who**  
13 **handles the analysis?**

14           A. The samples are sent to a certified lab.

15           **Q. And when the certified lab obtains the**  
16 **results, how does Illinois EPA learn of those**  
17 **results?**

18           A. Certified labs are required to upload  
19 those to our database that we refer to as SDWIS.

20           **Q. Now you mentioned earlier the term,**  
21 **90th percentile. Can you tell us just -- let me**  
22 **ask it this way.**

23                       **Is the 90th percentile the same as a**  
24 **maximum contaminant level or an MCL?**

1 A. No.

2 Q. Is the 90th percentile just a calculation  
3 of an average?

4 A. No. It's the -- in rank order it would be  
5 the 90th percentile, the volume.

6 Q. Okay. And just for the record, the  
7 calculation that you're referring to, is that  
8 358 Illinois Admin Code 611.350C?

9 A. Yes.

10 Q. Are you aware as to whether Aqua exceeded  
11 the lead action level for its University Park  
12 public water system for the period of January 1 to  
13 June 30, 2019?

14 A. Yes, they did.

15 Q. As a result of that exceedance, did Aqua  
16 change its corrosion control treatment?

17 A. Yes. Aqua switched to a blended phosphate  
18 that was primarily orthophosphate, but there was  
19 still a little bit of polyphosphate in it.

20 Q. Was that Aqua's decision to make?

21 A. Yes.

22 Q. After the lead action level exceedance for  
23 the period January 1 to June 30, 2019, and Aqua's  
24 subsequent change in the corrosion control

1 treatment as you described, did Aqua conduct  
2 sampling of homes within University Park to test  
3 for lead?

4 A. Yes.

5 MS. PAMENTER: If I may approach the witness,  
6 your Honor. I have a copy of the record, and I  
7 also have copies for opposing counsel, the hearing  
8 officer. So I don't know if you need an extra  
9 copy.

10 HEARING OFFICER HALLORAN: Petitioner was nice  
11 enough to bring three, so I don't need one, and  
12 Miss Brown has one. The court reporter has one.  
13 So I think we're good except for the witness.

14 MS. PAMENTER: We have extra copies.

15 May I approach the witness?

16 HEARING OFFICER HALLORAN: Yes, you may.

17 MS. PAMENTER: May the record reflect that I'm  
18 handing the witness a copy of the record dated  
19 September 23, 2022, R18 to R621.

20 Just for clarification, Hearing Officer,  
21 do I need to move that into evidence?

22 HEARING OFFICER HALLORAN: Is it already in the  
23 record?

24 MS. PAMENTER: It is the record that was filed

1 on September 23. I just didn't know if I needed to  
2 mark it and move it into evidence.

3 HEARING OFFICER HALLORAN: You may. Are you  
4 going to be entering a lot of these exhibits or --

5 MS. PAMENTER: I would submit -- I mean, the  
6 record is filed. And before -- I can do each  
7 individual exhibit if need be or move to have the  
8 entire record, you know, admitted in evidence with  
9 the understanding of Mr. Deeb's motion in limine  
10 that was submitted this morning and the hearing  
11 officer's ruling on it.

12 HEARING OFFICER HALLORAN: Mr. Deeb?

13 MR. DEEB: No objection.

14 HEARING OFFICER HALLORAN: Okay. Yeah, but the  
15 Board still notes about the motion in limine that  
16 was denied and knows nitrate documents may be  
17 contested, but go ahead, Miss Pamenter.

18 MS. PAMENTER: Is this --

19 HEARING OFFICER HALLORAN: Yes, it's moved.  
20 It's fine. It's in evidence, the whole record.  
21 Thank you.

22 MS. PAMENTER: Thank you.

23 BY MS. PAMENTER:

24 **Q. I'm gonna ask the witness, if you would,**

1 to please turn to R000522. Please let me know when  
2 you're there.

3 A. Okay.

4 **Q. Are you familiar with this document?**

5 A. Yes. These are individual samples, lead  
6 sample results from University Park.

7 **Q. Who created this document?**

8 A. I queried this information from our SDWIS  
9 database.

10 **Q. Can you just generally describe what each  
11 column represents?**

12 A. Sure. The first column is the facility  
13 ID. The second column is the sample collection  
14 date for each individual lead sample. The third  
15 column is the results. And then if it was zero in  
16 the sixth column, that shows the detection limit of  
17 the method, the laboratory method for analysis,  
18 then units. And then the eighth column is the site  
19 identification number. And the last redacted  
20 column would be the individual home address.

21 **Q. The results are listed in the chart that  
22 you prepared from newest to oldest; is that  
23 correct?**

24 A. Yes.

1 Q. Now, I note that at the top of R522 there  
2 are some results from July 2022; is that correct?

3 A. Yes.

4 Q. The special exception permit at issue in  
5 this permit appeal was dated June 29, 2022,  
6 correct?

7 A. Correct.

8 Q. As such were the July 2022 results listed  
9 on Page R522 considered for purposes of the  
10 June 29, 2022, special exception permit?

11 A. No.

12 Q. Do lead compliance sampling results assist  
13 in determining whether the corrosion control  
14 treatment is working?

15 A. Yes.

16 Q. Now, you previously testified that there  
17 was a lead action level exceedance for the period  
18 January 1 to June 30, 2019, and Aqua then changed  
19 its corrosion control treatment.

20 Did Aqua have a lead action level  
21 exceedance for the six-month sampling period of  
22 July 1 to December 31, 2019, for its University  
23 Park public water supply?

24 A. Yes.

1           **Q. Did Aqua thereafter change the corrosion**  
2 **control treatment for its system again?**

3           A. Yes. They changed from the blended  
4 phosphate that was primarily ortho to a phosphoric  
5 acid that was completed orthophosphate.

6           **Q. If we can turn to R000296, please, and**  
7 **please let me know when you're there?**

8           A. Okay.

9           **Q. What is the document that's set forth on**  
10 **R296 to 297?**

11          A. This is the construction permit for the  
12 change in corrosion control treatment to phosphoric  
13 acid.

14          **Q. And the date of this is April 17, 2020.**  
15 **Am I reading that correctly?**

16          A. Correct.

17          **Q. On Page R297, is that your signature?**

18          A. Yes.

19          **Q. And if I look on R296, there in about the**  
20 **middle of the page there's a capitalized wording,**  
21 **proposed improvements. Do you see that?**

22          A. Yes.

23          **Q. And underneath it there's a description.**  
24 **Is that the change in the corrosion control**

1 treatment that Illinois EPA approved in April of  
2 2020?

3 A. Yes.

4 Q. Did Aqua have a lead action level  
5 exceedance for the six-month sampling period  
6 January 1, 2020, to June 30, 2020?

7 A. Yes.

8 Q. Did Aqua have a lead action level  
9 exceedance for the six-month sampling period of  
10 July 1, 2020, to December 31, 2020?

11 A. No.

12 Q. So had Aqua found the correct corrosion  
13 control treatment for its University Park public  
14 water supply?

15 A. Well, they need to -- they would have  
16 needed two rounds to show -- they would have needed  
17 two rounds below the action level before we could  
18 have approved optimal water quality control  
19 parameters.

20 Q. In that time period -- excuse me, strike  
21 that.

22 After December 31, 2020, did the lead  
23 sampling results increase in the spring of 2021?

24 A. Yes.



1           **Q. Did Aqua have a lead action level**  
2 **exceedance for the six-month sampling period of**  
3 **January 1, 2021 to June 30, 2021?**

4           A. Yes.

5           **Q. Did Aqua determine why?**

6           A. Yes. Consultants for Aqua went back and  
7 looked at water quality parameters and theorized  
8 that zinc played or not -- theorized that nitrates  
9 played a role in affecting lead levels in  
10 University Park.

11           **Q. If you would please turn to R000351 and**  
12 **please let me know when you're there?**

13           A. Okay.

14           **Q. Have you seen this document before today?**

15           A. Yes.

16           **Q. What is it?**

17           A. It's a presentation. Aqua was giving us  
18 presentations frequently, and this is the  
19 presentation about the nitrate issue.

20           **Q. And this is dated July 14, 2021.**

21                   **Am I reading that correctly?**

22           A. Yes.

23           **Q. And then just if we could quickly flip to**  
24 **R -- we're gonna come back to this in a second, but**

1 **quickly flip to R363.**

2 A. Okay.

3 **Q. Was this part of the presentation that you**  
4 **were referring to, what starts on R363?**

5 A. Yes. These were -- this part was from  
6 Virginia Tech and their -- Aqua's consultant, Marc  
7 Edwards, and his Ph.D. students.

8 **Q. If we can go back to actually R000352 and**  
9 **if you could read the first bullet point, please?**

10 A. Recently observed elevated river nitrate  
11 levels from farm runoff is coinciding with lead  
12 level increases in certain homes that have not  
13 recovered. Recent river nitrate levels were  
14 extremely high making the trend more apparent.

15 **Q. So is this the issue to which you were**  
16 **referring earlier that Aqua notified the Illinois**  
17 **EPA of in the spring of 2021?**

18 A. Yes.

19 **Q. And then made these presentations in**  
20 **July 2021 relating to what they had previously**  
21 **notified the Illinois EPA of?**

22 A. Yeah. I don't recall when they notified  
23 us, but yes, that's correct.

24 **Q. Okay. I just want to -- one bullet down**

1 on R000352 there is a reference to Dr. Marc  
2 Edwards. Do you see that?

3 A. Yes.

4 Q. Does he work for the Illinois EPA or for  
5 Aqua?

6 A. Only in -- he doesn't work for the  
7 Illinois EPA, and he represented Aqua in a  
8 consulting capacity. He's a professor at Virginia  
9 Tech University.

10 Q. Okay. In the next bullet down you'll see  
11 a reference to Dr. David Cornwell.

12 Do you see that?

13 A. Yes.

14 Q. Does Dr. Cornwell work for the Illinois  
15 EPA or for Aqua?

16 A. Dr. Cornwell doesn't work for Illinois  
17 EPA, and he is a consultant for Aqua.

18 Q. Now, just recognizing neither Dr. Edwards  
19 or Cornwell are here and have been proffered as an  
20 expert witness, but you testified earlier that  
21 public water suppliers like Aqua need to determine  
22 the correct corrosion control treatment for their  
23 systems, and then you receive information from the  
24 public water suppliers.

1           Do you rely upon such information from  
2 consultants like Dr. Edwards and Dr. Cornwell in  
3 reviewing corrosion control treatment  
4 recommendations?

5           A.    Yes.

6           Q.    Now, in addition to Aqua's theory that  
7 nitrate concentrations may be contributing to  
8 increased lead levels, was Aqua researching in  
9 July 2021 to your knowledge whether a correlation  
10 existed between other water quality parameters and  
11 increased lead levels?

12          A.    Yes. They reviewed several water quality  
13 parameters. I don't have a complete list, but the  
14 one that I remember was chloride and specifically  
15 the chloride to sulfate mass ratio.

16          Q.    Did Aqua's studies indicate whether a  
17 particular type of corrosion control treatment may  
18 work better when there are high nitrate levels?

19          A.    Yes.

20          Q.    Are there any particular weather  
21 conditions that may cause nitrate levels to be  
22 higher?

23          A.    Nitrate's variable in the source and can  
24 increase following periods of heavy rainfall.

1 Q. As a result of the information that Aqua  
2 had obtained from its consultants, did Aqua make a  
3 change in its corrosion control treatment for its  
4 University Park public water system after July 1 of  
5 2021?

6 A. Yes. They switched from phosphoric acid  
7 to a zinc orthophosphate.

8 Q. So just so I have it correctly, they  
9 started with a blended phosphate mix. They made a  
10 change to a new blended phosphate comprised  
11 primarily of orthophosphate. Aqua then made a  
12 change to orthophosphate in the form of phosphoric  
13 acid, and now we're making a further change to I  
14 believe you said zinc orthophosphate; is that  
15 right?

16 A. That's correct.

17 Q. Okay. In July 2021 -- strike that.

18 Let's go to R000383. Please let me know  
19 when you're there.

20 A. Okay.

21 Q. If we look at R000383 to R000385, is this  
22 the July 2021 construction permit that Illinois EPA  
23 issued to Aqua regarding its request to modify the  
24 corrosion control treatment to zinc orthophosphate?

1 A. Yes.

2 Q. Did you prepare the July 2021 construction  
3 permit?

4 A. Yes.

5 Q. Why did you as the permit section manager  
6 draft this permit as opposed to someone else in the  
7 permit section?

8 A. I was most familiar with the issue in the  
9 permit section, and it was -- it didn't involve a  
10 change in equipment, just a change in chemical. So  
11 I felt I was best able to do that.

12 Q. If we look at R000385, is that your  
13 signature?

14 A. Yes.

15 Q. Let's turn to R000402, please, and let me  
16 know when you're there.

17 A. Okay.

18 Q. Was this one of the documents Aqua  
19 submitted to the Illinois EPA in support of its  
20 July 2021 construction permit application?

21 A. Yes.

22 Q. Now, if you turn to R000404, I will note  
23 that when we filed the record on the docket, we had  
24 highlighted sentences included. We do have copies

1 of the record with that highlighting showing. To  
2 the extent anyone in the room doesn't, I will note  
3 the sentence for the record.

4 So there's a sentence at the top of  
5 R000404 that starts, Aqua Illinois has postulated.

6 Do you see that sentence?

7 A. Yes.

8 Q. Okay. And that was highlighted by whom?

9 A. By me during the application review.

10 Q. Why did you highlight that sentence?

11 A. I felt it was important. It was  
12 reflective of what Aqua's -- Aqua and their  
13 consultant had been telling us.

14 Q. If you turn to R000405, at the top of that  
15 page there is another highlighted sentence. Though  
16 you did not highlight the start, in the spring of  
17 2021, you highlighted thereafter, nitrate as high  
18 as 8.1 mg per L was observed at the Kankakee WTP,  
19 and it goes on from there.

20 Do you see that?

21 A. Yes.

22 Q. And again is that your highlighting?

23 A. Yes.

24 Q. Why did you highlight that particular

1 **sentence?**

2 A. Just to show the range of nitrate observed  
3 in University Park, and it was important due to the  
4 correlation that Aqua had presented between lead  
5 and nitrate levels.

6 Q. Now, if we look back at the first page of  
7 this document, R000402, it's dated July 15, 2021;  
8 is that correct?

9 A. Yes.

10 Q. So at the time that this was written, Aqua  
11 had not changed to zinc orthophosphate as its  
12 corrosion control treatment; is that correct?

13 A. Correct.

14 Q. Let's take a look at R000436. Please let  
15 me know when you're there.

16 A. Okay.

17 Q. Is this the corresponding operating permit  
18 that Illinois EPA issued to Aqua authorizing the  
19 request to modify the corrosion control treatment  
20 to zinc orthophosphate?

21 A. Yes.

22 Q. Did you prepare the July 2021 operating  
23 permit?

24 A. I mean, the application was completed by



1 Aqua, and I signed -- after reviewing I signed the  
2 application at the bottom.

3 Q. So just for the record, your signature is  
4 at the bottom of Page R000436; is that right?

5 A. Yes, approving the operating permit.

6 Q. So your testimony has been that the  
7 July 2021 construction permit was issued and which  
8 would afford Aqua the ability to utilize zinc  
9 orthophosphate as its corrosion control treatment  
10 in the University Park public water supply.

11 Have I stated that correctly?

12 A. Yes.

13 Q. Okay. Did Aqua have a lead action level  
14 exceedance for the six-month sampling period of  
15 July 1, 2021, to December 31, 2021, after it  
16 instituted the zinc orthophosphate?

17 A. No.

18 Q. Okay. I appreciate your going through  
19 that foundation. Let's take a look at the letters  
20 that Aqua submitted to the Illinois EPA which are  
21 what underlies this particular permit appeal.

22 If you would please take a look at --  
23 we're gonna look at two documents, R000001 and  
24 R000008, please.

1           A.    Okay.

2           Q.    Are these the two letters that Aqua sent  
3 to Illinois EPA seeking -- let me start with that.

4                    Are these the two letters that  
5 Aqua Illinois sent to the Illinois EPA in March of  
6 2022?

7           A.    Yes.  One was received at the end of  
8 March.  The other one was received a day later,  
9 April 1.

10          Q.    Are the letters substantially the same?

11          A.    Yes.

12          Q.    Did Illinois EPA treat them as one?

13          A.    Yes.

14          Q.    And what did Aqua request through the  
15 March 2022 letters?

16          A.    To modify the permit condition regarding  
17 monthly monitoring in the zinc orthophosphate  
18 permit.

19          Q.    When you say the zinc orthophosphate  
20 permit, just for the record, is that the 2021  
21 construction permit that we've been discussing?

22          A.    Yes.

23          Q.    If we look at R000003 and R000009, please  
24 let me know when you're there.

1 A. Okay.

2 Q. There's an italicized paragraph on both of  
3 those pages in the middle that starts, collect  
4 between 40 and 60. Do you see that paragraph on  
5 both of those pages?

6 A. Yes.

7 Q. Is this paragraph the language that Aqua  
8 was seeking from Illinois EPA in a special  
9 exception permit or other permit?

10 A. Yes.

11 Q. Up until the date of the Aqua letters,  
12 March 24 and March 28, 2022, respectively, had Aqua  
13 been conducting sampling at a particular frequency?

14 A. Yes, monthly.

15 Q. Okay. And so through these two letters  
16 the particular language that is set forth on, for  
17 short version, R3 and R9, is Aqua seeking to have  
18 the monthly compliance sampling requirement  
19 eliminated as of March 31, 2022?

20 A. Yes.

21 Q. Just to -- I believe you indicated that  
22 you received one of these letters at the end of  
23 March and one of these letters at the beginning of  
24 April. Did I hear that correctly?

1 A. Yes.

2 Q. How long does Illinois EPA have to respond  
3 to a request like those set forth in the March 24  
4 and March 28, 2022, letters?

5 A. 90 days.

6 Q. Does Aqua set forth in the March 24 and  
7 March 28 letters the same background and  
8 justification for its request that the monthly  
9 compliance sampling requirement in the July 2021  
10 construction permit be eliminated as of the end of  
11 March 2022?

12 A. Yes.

13 Q. So let's talk about those justifications.  
14 The first one can be found in a couple of places,  
15 for the record, Page R1 in the first paragraph, R3  
16 in the first paragraph, R8 in the first paragraph  
17 and R9 in the first paragraph. There's a sentence  
18 that reads, quote, circumstances have changed, and  
19 the UP water system now meets the lead action level  
20 as of the July through December 2021 compliance  
21 monitoring period.

22 Do you see that reference on those pages?

23 A. Yes.

24 Q. Was that a sufficient justification to

1 grant Aqua's request to eliminate the monthly  
2 compliance sampling requirement?

3 A. No.

4 Q. Why?

5 A. Because in order to ensure that the water  
6 is assuredly safe, the theory with nitrate levels  
7 affecting lead -- nitrate concentrations affecting  
8 lead levels had to be tested.

9 Q. As of this time period at the end of March  
10 of 2022, had Aqua previously selected a corrosion  
11 control treatment, then had one six-month  
12 compliance sampling period below the lead action  
13 level, and then had a lead action level exceedance  
14 in the next consecutive six-month sampling period?

15 A. Could you repeat the question?

16 Q. Sure.

17 As of March of 2022, had Aqua previously  
18 selected a corrosion control treatment, then had  
19 one six-month compliance sampling period below the  
20 lead action level, and then had a lead action level  
21 exceedance in the next six-month compliance  
22 sampling period?

23 A. Yeah. Yes.

24 Q. Going back to the letters that start on R1

1 and R8, and again I'm gonna -- the same pages that  
2 I referenced earlier, it appears that there is an  
3 additional justification, though in slightly  
4 different wording on those pages, that generally  
5 provides on February 15, 2022, Aqua Illinois  
6 submitted its final, excuse me, final optimal  
7 corrosion control treatment recommendation of zinc  
8 orthophosphate.

9 Do you see that?

10 A. Yes.

11 Q. Now, just to clarify the record, in a  
12 couple of those places there's a reference to an  
13 Exhibit A, excuse me, an Attachment A. Do you see  
14 that reference to an Attachment A?

15 I can give you a particular example.

16 A. Okay.

17 Q. So on Page R8 at the end of the first  
18 paragraph, it says the final OCCT recommendation is  
19 included as Attachment A.

20 Do you see that reference?

21 A. Yes.

22 Q. Okay. And just for the record, if you  
23 would, can you turn to R000471, please, and let me  
24 know when you're there?

1 A. Okay.

2 Q. Is this the final optimal corrosion  
3 control treatment recommendation? It continues, I  
4 should say, R488 and R495, excuse me, R494, if you  
5 want to check those pages as well.

6 Is this the corrosion control -- final  
7 corrosion control treatment recommendation that's  
8 referred to in the March 24 and March 28 letters?

9 A. Yes.

10 Q. Okay. So just to go back, as an  
11 additional justification Aqua indicates that it  
12 submitted its final optimal corrosion control  
13 treatment on February 15, 2022, to the Illinois EPA  
14 identifying zinc orthophosphate as the optimal  
15 treatment.

16 Was that a sufficient justification to  
17 grant Aqua's request to eliminate the monthly  
18 sampling requirement?

19 A. No.

20 Q. Why?

21 A. Again, Aqua had to show that the water was  
22 assuredly safe by testing during periods when  
23 nitrate was high to see the effect on lead levels.

24 Q. And just to clarify, you've used the

1 phrase assuredly safe. Is there a particular  
2 regulation that corresponds to that phrase?

3 A. Yes. It's Title 35, Illinois  
4 Administrative Code Section 601.101.

5 Q. Let's go back to Aqua's March 24 and  
6 March 28 letters, and if you would please look at  
7 R4 and Pages R4 and R10, please.

8 A. Okay.

9 Q. On those -- starting on those two pages,  
10 Aqua lists seven additional justifications for  
11 granting its request to eliminate the monthly  
12 compliance sampling requirement. And if you need  
13 to flip, you know, pages, there's a Number 1  
14 through 7 that are set forth thereafter.

15 Do you see those?

16 A. Yes.

17 Q. Did you review those prior to today?

18 A. Yes.

19 Q. Did you review them prior to June 29,  
20 2022, the date of the issuance of the special  
21 exception permit at issue in this appeal?

22 A. Yes.

23 Q. In general, were those sufficient  
24 justifications to grant Aqua's request to eliminate



1 the monthly compliance sampling requirement?

2 A. No.

3 Q. Okay. Let's walk through those. We've  
4 already spoken about number one briefly. Let's  
5 turn to -- and I should say, when we were  
6 discussing the sentence that reads, circumstances  
7 have changed and the UP water system now meets the  
8 lead action level as of the July to December 2021  
9 compliance monitoring period, that corresponds to  
10 that earlier testimony.

11 So turning to number two, and please if  
12 you need to, take a moment to review it, but was  
13 number two set forth on Pages R4 and R10 a  
14 sufficient justification to grant Aqua's request to  
15 eliminate the monthly sampling requirement?

16 A. No.

17 Q. Why not?

18 A. Because to show the water's assuredly  
19 safe, Aqua needs to monitor during periods of high  
20 nitrate in the water to see the effect on lead  
21 levels.

22 Q. On Pages R4 and then R10 through 11 you'll  
23 see a reference to a number three for their  
24 justifications. Do you see those references?

1 A. Yes.

2 Q. Was number three a sufficient  
3 justification to eliminate the monthly compliance  
4 sampling requirement?

5 A. No.

6 Q. Why not?

7 A. In order to show the water's assuredly  
8 safe, Aqua needs to monitor for lead during periods  
9 of high nitrate.

10 Q. Now, on the top of Page R5 and 11 there's  
11 a reference to a table, 611.Table D.

12 Do you see those two charts?

13 A. Yes.

14 Q. Are they the same on each of those pages?

15 A. Yes.

16 Q. Okay. Now, on this chart there's a  
17 reference -- there's a column that sets forth  
18 system size.

19 Do you see that?

20 A. Yes.

21 Q. And are you familiar with the system size  
22 that relates to Aqua's University Park public water  
23 system?

24 A. Approximately, yes.

1 Q. So would it -- which range as set forth in  
2 the first column would Aqua's University Park  
3 public water system fall within?

4 A. Their population's between 3,301 to  
5 10,000.

6 Q. The second column then sets forth what?

7 A. The number of lead and copper monitoring  
8 sites.

9 Q. So for Aqua's University Park public water  
10 system, how many sampling sites are set forth?

11 A. For standard monitoring it would be  
12 40 sample sites.

13 Q. Okay. If we look on Pages R5 and R11,  
14 there is a fourth justification that Aqua set forth  
15 for its request to eliminate the monthly compliance  
16 sampling requirement.

17 Do you see those references?

18 A. Yes.

19 Q. Was the fourth justification sufficient  
20 for the Illinois EPA to eliminate the monthly  
21 compliance sampling requirement?

22 And if you need to, please take some time  
23 to review it.

24 A. No.

1           **Q.    Why not?**

2           A.    In order to ensure the water's assuredly  
3 safe, we need Aqua to monitor during periods of  
4 high nitrates.

5           **Q.    Just to finish out these justifications,**  
6 **R5 and R12, there is a fifth justification set**  
7 **forth. Was that a sufficient justification for**  
8 **Illinois EPA to eliminate the monthly compliance**  
9 **sampling requirement?**

10          A.    No.

11          **Q.    Why not?**

12          A.    In order to ensure the water's assuredly  
13 safe, we need Aqua to monitor for lead during  
14 periods of high nitrate.

15          **Q.    Taking a look again at Pages R8, excuse**  
16 **me, R6 and R12, there's a sixth justification set**  
17 **forth on those pages. Was that a sufficient**  
18 **justification to eliminate the monthly compliance**  
19 **sampling requirement?**

20          A.    No.

21          **Q.    Why not?**

22          A.    In order to ensure the water's assuredly  
23 safe, we need Aqua to monitor for lead during  
24 periods of high nitrate.

1 Q. Okay. And then, finally, on pages --  
2 starting on Page R6 and continuing, it appears, on  
3 to Page R7, and then also starting on Page R12 and  
4 continuing on to Page R13, there is a seventh  
5 justification set forth on those pages; is that  
6 correct?

7 A. Correct.

8 Q. Was that a sufficient justification to  
9 eliminate the monthly compliance sampling  
10 requirement?

11 A. No.

12 Q. Why not?

13 A. I mean, this justification was regarding  
14 other systems, not Aqua.

15 Q. Did Illinois EPA issue a response to  
16 Aqua's March 24 and March 28 of 2022 letters?

17 A. Yes.

18 Q. If you would please take a look at the  
19 document that starts on R000014 and ends on  
20 R000016, please, and let me know when you're there?

21 A. Okay.

22 Q. Are you familiar with this document?

23 A. Yes.

24 Q. What is it?

1           A.    It was the response to the March letters.  
2    It was a special exception permit issued in  
3    response to the March letters to modify the  
4    condition about monthly sampling.

5           **Q.    And just to be clear, the letters that**  
6    **you're referring to are Aqua's March 24 and**  
7    **March 28, 2022, letters that we've been discussing?**

8           A.    Yes.

9           **Q.    If you will, please, turn to Page R000016.**  
10          **Is that your signature on that page?**

11          A.    Yes.

12          **Q.    Who prepared the special exception permit**  
13    **dated June 29, 2022, that starts on R000014?**

14          A.    I did.

15          **Q.    Why did you as the section -- excuse me.**  
16          **Why did you as the permit section manager**  
17    **prepare a draft as opposed to someone else in the**  
18    **permit section?**

19          A.    Well, I had drafted the construction  
20    permit for the zinc orthophosphate, so it made  
21    sense for me to review the request to modify the  
22    conditions.

23          **Q.    And just for the record purposes, when you**  
24    **say the permit relating to zinc orthophosphate,**

1 that's the 2021 construction permit that we've been  
2 discussing previously?

3 A. Yes.

4 Q. Did anyone instruct you as to how to  
5 prepare the special exception permit that was  
6 issued on June 29, 2022?

7 A. No.

8 Q. Did anyone else prepare a draft permit in  
9 response to Aqua's March 24 and March 28, 2022,  
10 letters?

11 A. No.

12 Q. Did you meet with anyone regarding the  
13 language of what would be the special exception  
14 permit dated June 29, 2022?

15 A. After I had prepared it, I met with Sanjay  
16 Sofat, Mike Brown and Mike Roubitchek.

17 Q. And just in general, do they work for the  
18 Illinois Environmental Protection Agency?

19 A. Yes. Sanjay Sofat is the bureau chief for  
20 Bureau of Water. Mike Brown is the division  
21 manager for public water supplies, and Mike  
22 Roubitchek is division of legal counsel.

23 Q. Did you make any changes to the language  
24 of the special exception permit as a result of that

1 meeting?

2 A. No.

3 Q. Okay. Let's look at this as related to  
4 the condition that's at issue now in this permit  
5 appeal, additional condition Number 6. So if  
6 you'll turn to Page R000016, and let me know when  
7 you're there?

8 A. Okay.

9 Q. Now, you'll see there's a number six at  
10 the top, and then there's a paragraph that follows  
11 right thereafter.

12 Do you see that?

13 A. Yes.

14 Q. And the first sentence of that what I'll  
15 call second paragraph reads, as the agreed interim  
16 order requires monthly monitoring, Aqua's request  
17 to modify additional condition Number 6 is denied.

18 Did I read that correctly?

19 A. Yes.

20 Q. Just to clarify this agreed interim order  
21 reference, as of June 29, 2022, were you aware of  
22 the case, People of the State of Illinois versus  
23 Aqua Illinois pending in the Circuit Court of Will  
24 County?



1 A. Yes.

2 Q. As of June 29, 2022, were you aware of the  
3 allegations made against Aqua in that case?

4 A. Yes.

5 Q. As of June 29, 2022, were you aware of the  
6 agreed interim order that had been entered in that  
7 case on November 1 of 2019?

8 A. Yes.

9 Q. And if we can, just so that everyone can  
10 find it in the record, if you go to R000602, please  
11 let me know when you're there.

12 A. Okay.

13 Q. Is this the agreed interim order to which  
14 you reference on Page R000016 in the special  
15 exception permit?

16 A. Yes.

17 Q. And if you flip to the next -- the very  
18 next page, R000603, there's a Paragraph 4. The  
19 parties listed out the allegations in the complaint  
20 against Aqua in that Paragraph 4; is that right?

21 A. Yes.

22 Q. And with respect to the first allegation  
23 that starts with -- there's an A. It's the fourth  
24 line down. That particular allegation relates to

1 35 Illinois Admin Code 601.101; is that correct?

2 A. Correct.

3 Q. And that relates to your prior testimony  
4 about the water needing to be -- the water in  
5 Aqua's University Park public water system needed  
6 to be assuredly safe; is that correct?

7 A. Correct.

8 Q. So going back to the special exception  
9 permit that starts R000014 through R000016, why was  
10 Aqua's request to modify additional condition  
11 Number 6 denied in addition to your prior testimony  
12 that the justifications they set forth in their  
13 letters were not sufficient?

14 A. Because the nitrate data submitted by Aqua  
15 since the zinc orthophosphate operating permit was  
16 issued wasn't high enough to test the theory that  
17 nitrate levels could affect -- that nitrate  
18 concentrations could affect lead levels in  
19 University Park.

20 Q. And with respect to the theory that you  
21 referenced, was that Aqua's and its consultant's  
22 theory?

23 A. Yes.

24 Q. Had Aqua shown through the March 24 and

1     **March 28, 2022, letters that it would not violate**  
2     **the act or the Board regulations if the monthly**  
3     **sampling requirement were eliminated?**

4           A.    No.

5           **Q.    Did Aqua submit to Illinois EPA any**  
6     **further justifications in support of its request to**  
7     **eliminate the monthly compliance sampling**  
8     **requirement between March 28, 2022, and June 29,**  
9     **2022?**

10          A.    No.

11          **Q.    And just for the record, those references,**  
12     **March 28, 2022, is the second of the two letter**  
13     **requests that Aqua submitted; is that right?**

14          A.    Repeat that, please.

15          **Q.    Yeah, of course.**

16                 **March 28, 2022, that corresponds to the**  
17     **second of the two letter requests that Aqua**  
18     **submitted to Illinois EPA; is that right?**

19          A.    That's the letter date that we received  
20     this on April 1, yes.

21          **Q.    And understood you received it after that**  
22     **date.**

23          A.    Yes.

24          **Q.    Thank you for the clarification.**

1           And then June 29, 2022, is the date of the  
2 special exception permit. Do I have that right?

3           A. Yes.

4           Q. Now, if I look again going back to  
5 R000016, are you still at that page?

6           A. Yes.

7           Q. Now, with regards to number six that's set  
8 forth on that page, the first sentence speaks to  
9 additional condition Number 6 of the 2021 permit as  
10 being duplicative of the lead compliance monitoring  
11 requirement in the agreed interim order.

12                   Do you see that reference?

13           A. Yes.

14           Q. How was additional condition Number 6 in  
15 the 2021 permit duplicate of the lead compliance  
16 monitoring requirement in the agreed interim order?

17           A. With respect to the -- they both had  
18 monthly monitoring requirements for lead sampling.

19           Q. Okay. Let's take a look at that a little  
20 bit more closely. We're gonna look at two  
21 documents at the same time, R000384, which just for  
22 the record is the second page of the July 30, 2021,  
23 construction permit that was issued for the switch  
24 to zinc orthophosphate as Aqua's corrosion control

1 treatment; and then simultaneously if you could  
2 also have in front of you, if we can, R000602.  
3 And, actually, more specifically I'm gonna have you  
4 go to R000609, please, which is one of the pages  
5 within the agreed interim order.

6 If you could let me know when you have  
7 those two pages in front of you. Please let me  
8 know if I need to repeat either page, please also  
9 let me know.

10 A. Okay.

11 Q. All right. So comparing additional  
12 condition Number 6 of the 2021 permit that's set  
13 forth on R000384 and Section F in the agreed  
14 interim order concerning requirements for  
15 compliance sampling that starts on R000609, how are  
16 they duplicative?

17 A. They both require monthly monitoring for  
18 lead in University Park.

19 Q. Well, if I look at R000384, at the  
20 beginning of Number 6 it says, collect between  
21 40 and 60 lead compliance samples.

22 Do you see that?

23 A. Yes.

24 Q. Where is the reference to 40 to 60 lead

1 **compliance samples in Section F of the agreed**  
2 **interim order?**

3 A. Section F has a reference to the  
4 regulation for the minimum number of samples.

5 Q. **And, I'm sorry, the reference to the**  
6 **regulation to which you're referring is what?**

7 A. 611.356.

8 Q. **And why -- strike that, excuse me.**

9 **And but what about the upper limit, the**  
10 **60 lead compliance samples?**

11 A. That was in the permit, but not in the  
12 order.

13 Q. **Why?**

14 A. To have consistent monthly monitoring  
15 taking approximately the same number of samples  
16 each month.

17 Q. **As of June 29, 2022, was the upper limit**  
18 **of 60 still needed?**

19 A. As of June 29, no.

20 Q. **2022?**

21 A. No.

22 Q. **Turning back to R000384 and 609, is there**  
23 **a reference to monthly -- excuse me.**

24 **Is there a reference to monthly sampling**

1 instead of six-month sampling in both of those  
2 provisions?

3 A. Can you repeat?

4 Q. Yes, of course. That's my fault when the  
5 question doesn't make sense.

6 So we're gonna look at R000384 with regard  
7 to additional condition Number 6 at the bottom of  
8 that page.

9 Do you see that?

10 A. Yes.

11 Q. And then simultaneously R000609,  
12 Section F, concerning requirements for compliance  
13 sampling.

14 Do you see those two?

15 A. Yes.

16 Q. Is there a reference to ave monthly  
17 sampling in both?

18 A. Yes.

19 Q. Is there a reference to collecting  
20 compliance samples only from approved sample site  
21 locations?

22 A. Yes.

23 Q. Now, in R000609, again, is that reference  
24 to the regulation?

1 A. Yes.

2 Q. Now, on R000384, additional condition  
3 Number 6, the second sentence starts, consideration  
4 should be given.

5 Do you see that sentence?

6 A. Repeat the location, please.

7 Q. Of course.

8 R000384, which is the 2021 construction  
9 permit, Number 6, we're talking additional  
10 condition Number 6.

11 Do you see that?

12 A. Yes.

13 Q. And the second sentence starts,  
14 consideration should be given.

15 Do you see that sentence?

16 A. Yes.

17 Q. Can you find that sentence also in  
18 Section F of the agreed interim order on R000609?

19 A. No.

20 Q. Is consideration should be given, is that  
21 particular sentence on R000384 mandatory?

22 A. No.

23 Q. Why not?

24 A. Cause it uses the word should, we just



1 wanted the -- there was a sampling pool of  
2 approximately 80 homes, and we requested that high  
3 homes be given consideration for resampling.

4 Q. Whose decision was it, though, as to  
5 whether to take that into consideration and  
6 actually apply it in the sampling?

7 A. Aqua's. It was just a recommendation.

8 Q. Also on R000384, additional condition  
9 Number 6 at the end of the page, the third sentence  
10 starts, consideration should also be given.

11 Do you see that sentence?

12 A. Yes.

13 Q. Is that sentence in the agreed interim  
14 order Section F on R000609?

15 A. No.

16 Q. And again is the sentence, consideration  
17 should also be given, that third sentence  
18 mandatory?

19 A. No.

20 Q. Whose decision was it to take nitrate  
21 CMS -- CSMR into consideration when doing the  
22 sampling?

23 A. Aqua's.

24 Q. As of June 29, 2022, had Aqua been below

1 the lead action level for two consecutive six-month  
2 compliance sampling periods?

3 A. No.

4 Q. For the six-month period of January 1 to  
5 June 30, 2022, what date did Aqua have until to  
6 report the compliance sampling results?

7 A. July 10 of 2022.

8 Q. Is there a particular regulation that  
9 corresponds to that?

10 A. Yes.

11 Q. Okay. And, in fact, if we -- if you still  
12 have the R000609 open, Paragraph 14, in the third  
13 line toward the end of that paragraph -- excuse me.

14 In the third line of the first sentence in  
15 that paragraph reads, Aqua is required to report  
16 the compliance sampling results to Illinois EPA  
17 within ten days after the end of each applicable  
18 six-month sampling period pursuant to 35 Illinois  
19 Admin Code 611.360A.

20 Did I read that correctly?

21 A. Yes.

22 Q. Is that the regulation to which you were  
23 referring?

24 A. Yes.

1 Q. As such on June 29, 2022, did Illinois EPA  
2 know whether or not Aqua had a lead action level  
3 exceedance for the period of January 1, 2022,  
4 through June 30, 2022?

5 A. No.

6 Q. Why did Illinois EPA issue this special  
7 exception permit on June 29, 2022, instead of  
8 waiting until the ten days to run on July 10 of  
9 2022?

10 A. Because the 90-day time frame was  
11 ending -- was expiring at the end of June.

12 Q. When you say the 90-day time period, is  
13 that the time within which Illinois EPA has to  
14 respond to a request for a special exception permit  
15 like what Aqua did in the March 24 and March 28  
16 letters?

17 A. Yes.

18 Q. If Aqua had met two consecutive six-month  
19 compliance sampling periods below the lead action  
20 level at the time of its issuance of the 2022  
21 permit, would Illinois EPA have eliminated the  
22 monthly compliance sampling requirement as Aqua had  
23 requested?

24 A. No.

1           **Q.    Why as of June 29, 2022, did Aqua need to**  
2 **keep conducting monthly compliance sampling in**  
3 **accordance with the agreed interim order?**

4           A.    To understand the effects of nitrate on  
5 lead levels in University Park.

6           **Q.    What is your understanding of how nitrate**  
7 **levels are affecting lead releases in University**  
8 **Park?**

9           A.    Aqua's consultant theorized that there's a  
10 correlation between higher nitrate concentrations  
11 and lead levels.

12           **Q.    Now, you previously testified about the**  
13 **July 14, 2021, presentations that Aqua and its**  
14 **consultants had presented to Illinois EPA.**

15                   **Did Aqua conduct further studies after**  
16 **July 14, 2021, regarding nitrate's possible impact**  
17 **on lead release in University Park with zinc**  
18 **orthophosphate as the corrosion control treatment?**

19           A.    Yes.

20           **Q.    Let's turn to R000452, please.  Please let**  
21 **me know when you are there.**

22           A.    Okay.

23           **Q.    What is this?**

24           A.    This was an additional presentation on

1 effects of -- on effects of nitrate -- on nitrate  
2 effects on lead conducted by Virginia Tech  
3 University researchers.

4 Q. And just for the record, if we can also  
5 turn to R000443, please, just let me know when  
6 you're there.

7 A. Okay.

8 Q. Is this also part of the Aqua's  
9 presentation to which you were referring?

10 A. Yes.

11 Q. And the date of these two presentations on  
12 R443 and R452?

13 A. October 29 of 2021.

14 Q. As of October 29 of 2021, had Aqua shown  
15 that zinc orthophosphate worked in Aqua's  
16 University Park public water supply when there were  
17 high levels of nitrate?

18 A. No.

19 Q. If you'll turn to R000469, please. I  
20 apologize. No. I did have it correct, so I'll  
21 take that back. If you look at the last bullet on  
22 that page that starts zinc orthophosphate, do you  
23 see that?

24 A. Yes.

1 Q. And the sentence continues, continues to  
2 show promise. Had, as of October 29, 2021, Aqua  
3 made a determination regarding zinc orthophosphate  
4 and its ability to address nitrate as related to  
5 lead levels in its University Park public water  
6 supply?

7 A. Could you clarify that, please?

8 Q. Sure.

9 The fourth bullet on Page R000469 starts,  
10 zinc orthophosphate continues to show promise.

11 Do you see that?

12 A. Yes.

13 Q. As such as of October 29, 2022, had Aqua  
14 shown that the zinc orthophosphate which was its  
15 new corrosion control treatment worked in the Aqua  
16 public -- University Park public water system when  
17 there were high levels of nitrate?

18 A. No.

19 Q. Did Aqua submit information with its  
20 March 24 and March 28, 2022, letters to show that  
21 the concerns it raised with the Illinois EPA  
22 regarding nitrate variability and its impact on  
23 lead levels had been addressed through the use of  
24 zinc orthophosphate as the corrosion control

1 treatment?

2 A. No.

3 Q. Between March 28, 2022, the date of Aqua's  
4 second letter, and June 29, 2022, the date that  
5 Illinois EPA issued the special exception permit,  
6 did Aqua submit any such information?

7 A. No.

8 Q. If we can go back to R000402, please?

9 A. Okay.

10 Q. So you previously testified about the  
11 document that Dr. David Cornwell, a consultant for  
12 Aqua, prepared as of July 15, 2022, in support of  
13 the 2021 construction permit which then brought  
14 about zinc orthophosphate as the corrosion control  
15 treatment.

16 If we go to R000405 of that document, the  
17 top highlighted sentence that starts as, excuse me,  
18 in the spring of 2021, nitrate as high as  
19 8.1 mg per L was observed.

20 Do you see that reference?

21 A. Yes.

22 Q. And as of spring of 2021, Aqua was not  
23 using zinc orthophosphate as its corrosion control  
24 treatment, correct?

1           A.    Correct.

2           Q.    As such when Aqua observed nitrate as high  
3 as 8.1 mg per L, and there's also a reference in  
4 that sentence to 6.7 mg per L, as of that time Aqua  
5 could not understand the effect, if any, on nitrate  
6 on lead levels when using zinc orthophosphate as  
7 its corrosion control treatment, correct?

8           A.    Correct.

9           Q.    After Aqua's introduction of zinc  
10 orthophosphate into the University Park public  
11 water supply in July 2021, did Aqua submit any  
12 nitrate results over 5.0 mg per L?

13          A.    No.

14          Q.    And why is 5.0 mg per L an important  
15 figure?

16          A.    I mean, that's just their range that they  
17 tested for in University Park that -- those were  
18 the -- that was the range, 0 to 5. And it didn't  
19 get higher than that during that time period.

20          Q.    Do you believe that the information  
21 Illinois EPA did receive as of June 29, 2022,  
22 demonstrated that zinc -- that using zinc  
23 orthophosphate would allow Aqua to be below the  
24 lead action level in its University Park public



1 water system?

2 A. Could you repeat that, please?

3 Q. Yeah, I didn't do a very good job with  
4 that one.

5 Do you believe that the information  
6 Illinois EPA received from Aqua as of June 29,  
7 2021 -- 2022, excuse me, demonstrated that using  
8 zinc orthophosphate as its corrosion control  
9 treatment would allow Aqua to be below the lead  
10 action level in its University Park public water  
11 system?

12 A. No.

13 Q. Do you believe that the information  
14 Illinois EPA received from Aqua as of June 29,  
15 2022, demonstrated that using zinc orthophosphate  
16 would ensure that the water in Aqua's University  
17 Park public water system was assuredly safe?

18 A. No.

19 Q. Do you stand by your decision regarding  
20 additional condition Number 6 in the June 29, 2022,  
21 special exception permit?

22 A. Yes.

23 MS. PAMENTER: No further questions.

24 HEARING OFFICER HALLORAN: Thank you,

1 Miss Pamenter.

2 We can go off the record.

3 (WHEREUPON, a short recess was  
4 taken.)

5 HEARING OFFICER HALLORAN: All right. We're  
6 back on the record. I think Mr. Deeb may have some  
7 cross. You may continue or proceed.

8 CROSS-EXAMINATION

9 BY MR. DEEB:

10 Q. Good morning, Mr. Cook. My name is Dan  
11 Deeb, attorney for petitioner, Aqua. Nice to meet  
12 you.

13 A. Nice to meet you.

14 Q. Let's start, if you would -- and I don't  
15 have many questions, but let me start, if I may,  
16 with the 2022 permit that was issued on June 29,  
17 2022. It's record Number R, bunch of zeros, 14.

18 A. Okay.

19 Q. If I could take you to the last page of  
20 that Number 16?

21 A. Okay.

22 Q. Thank you. Take your time.

23 Are you there?

24 A. Yes.

1 Q. Okay. There's a paragraph right above  
2 your signature block?

3 A. Yes.

4 Q. Could you read that first sentence,  
5 please?

6 A. As the agreed interim order requires  
7 monthly monitoring, Aqua's request to modify  
8 additional condition Number 6 is denied.

9 Q. Does this permit state any other reason  
10 for denial of Aqua's request to modify additional  
11 Condition 6?

12 A. No.

13 Q. Did you provide any other writing to  
14 Aqua Illinois explaining a reason or reasons for  
15 the denial that was referenced in this 2022 permit?

16 A. No.

17 Q. A few times today there have been  
18 discussions about switches of treatment  
19 technologies. I have a couple questions on that.

20 The switches to orthophosphate and zinc  
21 orthophosphate, were those approved by the Illinois  
22 EPA?

23 A. Yes.

24 Q. Okay. Those weren't decisions that

1 Aqua Illinois made on its own or without  
2 consultation with the agency?

3 A. Correct.

4 Q. I believe I heard a reference to a use of  
5 phosphoric acid as a treatment?

6 A. Yes.

7 Q. I wanted to clarify. When was phosphoric  
8 acid used, if you recall?

9 A. I believe it was starting in April of  
10 2020.

11 Q. Thank you.

12 Your testimony today I believe mentioned a  
13 need for monitoring during periods of high  
14 nitrates?

15 A. Yes.

16 Q. Is that true?

17 A. Yes.

18 Q. So where should nitrates be high for that  
19 monitoring? Should that be in the river water?  
20 Should that be in the -- at the waste water  
21 treatment plant or within some point in the  
22 University Park water system?

23 A. The latter, within the University Park  
24 water system.

1           **Q. At any particular point that you wish to**  
2 **see the high nitrate levels?**

3           A. The nitrate concentration won't -- there's  
4 no treatment to remove nitrate, so monitoring at a  
5 single point at the entry points of the system  
6 would be sufficient.

7           **Q. Okay. And how high? You mentioned that**  
8 **it should be high nitrates. What level do you**  
9 **believe to be sufficiently high for this monitoring**  
10 **to occur?**

11          A. Well, I mean, Aqua's indicated that its  
12 been as high as 8.1, and the MCL is 10 milligrams  
13 per liter, so, you know, between 5 and 10.

14          **Q. And where should the monitoring occur?**

15          A. University Park at the Central Avenue  
16 Booster Station.

17          **Q. Thank you.**

18                   **Does or did the permit issued on June 29,**  
19 **2022, require monitoring or sampling during periods**  
20 **of high nitrate?**

21          A. It required the continued monitoring for  
22 nitrate.

23          **Q. Did it require --**

24          A. Oh.

1           **Q. Did it require monitoring or additional**  
2 **monitoring when nitrates were at the higher levels**  
3 **you've mentioned?**

4           A. I believe it required either weekly or  
5 biweekly monitoring for nitrate, so that would  
6 continue.

7           **Q. But the monthly or weekly monitoring,**  
8 **that -- the frequency of that was agnostic to what**  
9 **the nitrate levels were?**

10          A. Correct.

11          **Q. How does monthly compliance sampling at**  
12 **customer homes help identify system conditions when**  
13 **nitrate levels are high?**

14          A. Lead monitoring at customer homes shows  
15 whether or not there's a correlation with nitrate  
16 and shows the effectiveness of the zinc  
17 orthophosphate treatment.

18          **Q. Monthly monitoring for home can be**  
19 **conducted by Aqua under the Lead and Copper Rule,**  
20 **which we've discussed earlier, on any given day of**  
21 **a month, correct?**

22          A. Correct.

23          **Q. And sampling is not required at any**  
24 **additional or different level when nitrate levels**

1 are high or low, correct?

2 A. Correct.

3 Q. You've mentioned the lead action level of  
4 15 parts per billion, I believe, correct?

5 A. Correct.

6 Q. And you've also talked about assuredly  
7 safe, correct?

8 A. Correct.

9 Q. What level of lead is assuredly safe?

10 A. That's a narrative standard, so there's  
11 not a specific level of lead that's assuredly safe.  
12 The CDC says there's no safe level, but that's not  
13 in the regulation. It just says assuredly safe.

14 HEARING OFFICER HALLORAN: Mr. Cook, could you  
15 please keep your voice up? Thanks.

16 THE WITNESS: Sorry.

17 HEARING OFFICER HALLORAN: No, no. That's  
18 fine.

19 BY MR. DEEB:

20 Q. Do you believe that a public water system  
21 can meet the lead action level but still not  
22 provide drinking water that is assuredly safe for  
23 lead?

24 MS. PAMENTER: Objection to the extent it calls

1 for a legal conclusion.

2 HEARING OFFICER HALLORAN: I'm sorry,  
3 Miss Pamenter. Can you speak up?

4 MS. PAMENTER: I apologize. Objection to the  
5 extent that it calls for a legal conclusion.

6 HEARING OFFICER HALLORAN: He can answer if  
7 he's able. Overruled.

8 THE WITNESS: Could you repeat the question?

9 MR. DEEB: Certainly.

10 BY MR. DEEB:

11 **Q. Do you believe that a public water system**  
12 **can meet the lead action level but still not**  
13 **provide concurrently drinking water that is**  
14 **assuredly safe for lead?**

15 A. It's possible.

16 **Q. And what's your basis for that belief?**

17 A. Well, lead concentrations vary over time,  
18 so a system could be in compliance with the Lead  
19 and Copper Rule but still have periods of higher  
20 lead results due to water quality conditions.

21 MR. DEEB: No further questions.

22 THE WITNESS: Thank you.

23 MS. PAMENTER: Just one moment if I may.

24



1 (WHEREUPON, a discussion was had  
2 off the record.)

3 MS. PAMENTER: The respondent has no further  
4 questions of the witness.

5 HEARING OFFICER HALLORAN: Thank you  
6 Miss Pamenter.

7 Mr. Deeb, any rebuttal.

8 MR. DEEB: No, sir.

9 HEARING OFFICER HALLORAN: Thank you.

10 Miss Brown, any questions?

11 All right. Let's go off the record for a  
12 minute.

13 (WHEREUPON, a short recess was  
14 taken.)

15 HEARING OFFICER HALLORAN: All right. Just  
16 some preliminary or administrative stuff to  
17 establish that Hearing Officer Exhibit 1 was  
18 accepted over objection, and that is a complaint  
19 for injunctive relief in several counties.

20 MR. GRANT: And the answer as well.

21 HEARING OFFICER HALLORAN: And the answer as  
22 well. Also, the record was admitted into evidence,  
23 and that's marked as Hearing Exhibit Number 2.

24 And that's over objection from Mr. Deeb

1 and basically what he argues in his motion in  
2 limine, correct?

3 MR. DEEB: Yes.

4 HEARING OFFICER HALLORAN: The nitrate docs  
5 weren't included in the first amended record.

6 MR. DEEB: Correct.

7 HEARING OFFICER HALLORAN: Okay. And we're  
8 gonna proceed to -- we already have an established  
9 and agreed to posthearing briefing schedule. And  
10 it is the parties are to file simultaneous opening  
11 briefs on or before October 21, 2022, file  
12 simultaneous responses on or before November 9,  
13 2022. Public comment, if any, is due to be filed  
14 on or before October 14, 2022. The record in this  
15 appeal closes on November 9, 2022.

16 And just a note, we have requested an  
17 expedited transcript, and I believe the transcript  
18 should be coming in on Monday, October 3. I want  
19 to thank you all for your politeness, civility and  
20 demeanor. Everything was terrific. Have a great  
21 day.

22 (WHEREUPON, proceedings were  
23 concluded at 11:15 a.m.)

24

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )  
4

5 RAELENE STAMM being first duly sworn, on  
6 oath says that she is a court reporter doing  
7 business in the City of Chicago; and that she  
8 reported in shorthand the proceedings of said  
9 hearing, and that the foregoing is a true and  
10 correct transcript of her shorthand notes so taken  
11 as aforesaid, and contains the proceedings given at  
12 said hearing.

13  
14 \_\_\_\_\_  
15 Certified Shorthand Reporter  
16  
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18  
19  
20  
21  
22  
23  
24

<p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> 1:18 90:23  <b>ability</b> 10:1 49:8 78:4  <b>able</b> 46:11 88:7  <b>above-entitled</b> 1:13  <b>accept</b> 13:23 14:4  <b>accepted</b> 5:14 89:18  <b>acid</b> 39:5,13 45:6 45:13 84:5,8  <b>act</b> 16:10 19:23 20:9 22:12 24:22 27:12 29:7 67:2  <b>acted</b> 7:24  <b>acting</b> 24:6  <b>action</b> 13:9 14:23 15:3,20 30:8 32:1,5,8,10 34:11,22 38:17 38:20 40:4,8,17 41:1 49:13 52:19 53:12,13 53:20,20 57:8 74:1 75:2,19 80:24 81:10 87:3,21 88:12  <b>activation</b> 20:1  <b>addition</b> 15:22 44:6 66:11  <b>additional</b> 7:8,16 7:20,22 8:15 9:4 10:13 11:13 54:3 55:11 56:10 64:5,17 66:10 68:9,14 69:11 71:7 72:2 72:9 73:8 76:24 81:20 83:8,10 86:1,24  <b>address</b> 6:22 8:5 37:20 78:4  <b>addressed</b> 78:23</p>	<p><b>Admin</b> 34:8 66:1 74:19  <b>administrative</b> 13:14 29:9 56:4 89:16  <b>admissions</b> 13:18  <b>admitted</b> 36:8 89:22  <b>adopted</b> 22:12 29:8  <b>affect</b> 66:17,18  <b>afford</b> 49:8  <b>aforesaid</b> 91:11  <b>afternoon</b> 5:23 6:20 7:2  <b>agency</b> 1:8 5:7 6:12 16:18 18:2 18:9 20:8 22:10 24:4,17 30:23 63:18 84:2  <b>agnostic</b> 86:8  <b>ago</b> 7:9  <b>agreed</b> 8:12 15:9 15:12 64:15,20 65:6,13 68:11,16 69:5,13 70:1 72:18 73:13 76:3 83:6 90:9  <b>ahead</b> 36:17  <b>air</b> 19:17  <b>Alex</b> 2:5 6:6  <b>allegation</b> 65:22 65:24  <b>allegations</b> 65:3 65:19  <b>allow</b> 80:23 81:9  <b>amended</b> 7:2 90:5  <b>analysis</b> 33:13 37:17  <b>Ann</b> 2:15 6:16  <b>annually</b> 33:10  <b>answer</b> 12:23 13:18 88:6 89:20,21  <b>apologies</b> 14:11</p>	<p><b>apologize</b> 77:20 88:4  <b>apparent</b> 42:14  <b>appeal</b> 5:8 10:23 13:9 14:6 15:12 38:5 49:21 56:21 64:5 90:15  <b>APPEARANCES</b> 2:1  <b>appears</b> 54:2 61:2  <b>applicable</b> 74:17  <b>applicant</b> 22:7  <b>application</b> 16:9 20:5,6 21:22 22:1,2,3,4 27:2 46:20 47:9 48:24 49:2  <b>applications</b> 18:13,21 19:3,11 19:16 20:17 21:1,10 22:16 24:19,23 25:13 25:18,19,23 26:10,16,17 27:9  <b>applies</b> 22:8  <b>apply</b> 73:6  <b>appreciate</b> 49:18  <b>approach</b> 35:5,15  <b>approval</b> 26:21  <b>approvals</b> 24:23  <b>approve</b> 19:2 20:24  <b>approved</b> 40:1,18 71:20 83:21  <b>approving</b> 49:5  <b>approximately</b> 5:3 19:10 21:9 23:4 25:1,5 26:4 26:6,22 27:4,19 27:20 29:1 58:24 70:15 73:2  <b>April</b> 39:14 40:1 50:9 51:24</p>	<p>67:20 84:9  <b>Aqua</b> 1:4 5:5 11:5 13:3,7,18 14:19 15:7,13,14,18,20 15:24 16:3,7 28:2,5,8,12,16 28:22 29:18 31:2,6,9,17,20 31:22 34:10,15 34:17 35:1 38:18,20 39:1 40:4,8,12 41:1,5 41:6,17 42:16 43:5,7,15,17,21 44:8 45:1,2,11 45:23 46:18 47:5,12 48:4,10 48:18 49:1,8,13 49:20 50:2,5,14 51:7,11,12,17 52:6 53:10,17 54:5 55:11,21 56:10 57:19 58:8 59:14 60:3 60:13,23 61:14 64:23 65:3,20 66:14,24 67:5,13 67:17 73:24 74:5,15 75:2,15 75:18,22 76:1,13 76:15 77:14 78:2,13,15,19 79:6,12,22 80:2 80:4,11,23 81:6 81:9,14 82:11 83:14 84:1 86:19  <b>Aqua's</b> 15:10 34:20,23 42:6 44:6,16 47:12 53:1 55:17 56:5 56:24 57:14 58:22 59:2,9 61:16 62:6 63:9 64:16 66:5,10,21</p>	<p>68:24 73:7,23 76:9 77:8,15 79:3 80:9 81:16 83:7,10 85:11  <b>area</b> 14:18 23:19  <b>Arent</b> 2:3 6:5,7  <b>argues</b> 90:1  <b>arguments</b> 11:9 11:15  <b>asked</b> 9:12  <b>assigned</b> 5:4 25:9  <b>assist</b> 38:12  <b>assuredly</b> 15:5 53:6 55:22 56:1 57:18 58:7 60:2 60:12,22 66:6 81:17 87:6,9,11 87:13,22 88:14  <b>Attachment</b> 54:13 54:14,19  <b>attempt</b> 7:12 10:12  <b>attorney</b> 2:13 3:4 5:20 6:10,14 82:11  <b>August</b> 7:5 8:2 10:9  <b>authenticity</b> 13:21  <b>authorizing</b> 48:18  <b>ave</b> 71:16  <b>Avenue</b> 85:15  <b>average</b> 34:3  <b>aware</b> 34:10 64:21 65:2,5</p>
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