

ILLINOIS POLLUTION CONTROL BOARD
December 15, 2022

AQUA ILLINOIS, INC.,)
)
 Petitioner,)
)
 v.) PCB 23-12
) (Permit Appeal - Water)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by M. Gibson):

Aqua Illinois, Inc. (Aqua) petitions the Board for review of a June 29, 2022 determination of the Illinois Environmental Protection Agency (Agency). In that determination, the Agency issued a Special Exception Permit in which it denied Aqua's request to modify Additional Condition 6 of Public Water Supply Construction Permit No. 0071-FY2022, issued by the Agency on July 30, 2021 (Permit). See 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 105.206. The determination concerns Aqua's Aqua Illinois-University Park public water system (UP System) located in the Village of University Park, in both Will and Cook Counties. Following Aqua's voluntary withdrawal of its appeal as to the other contested permit conditions, the only remaining contested permit condition is Additional Condition 6.

In its determination letter, the Agency denied Aqua's request to modify Additional Condition 6, and terminated it, on the grounds that the condition duplicates the lead compliance monitoring requirement in an agreed interim order (Agreed Interim Order) entered into between Aqua and the People of the State of Illinois on November 1, 2019 in a pending circuit court action.¹ Aqua contends the denial was improper, as it was not necessary to accomplish the purpose of the Illinois Environmental Protection Act (Act) or Board regulations, and that issuance of the modified permit as requested by Aqua would not cause a violation of the Act or Board regulations.

Additionally, Aqua has filed a motion for interlocutory appeal of a hearing officer order that denied Aqua's Motion *in limine* to limit the use of certain documents at the hearing in this matter.

Today, the Board finds that Aqua's appeal of the Agency's June 29, 2022 denial of Aqua's request to modify Additional Condition 6 of its public water supply construction permit is moot, as the condition no longer exists in the Permit, and denies Aqua's motion for interlocutory appeal of the hearing officer order. The Board finds that because the plain language of the Agency's determination eliminated Additional Condition 6 from the Permit,

¹ *People of the State of Illinois v. Aqua Illinois, Inc.*, No. 19 CH 1208 (August 16, 2019).

there exists no contested condition on appeal before the Board, and concludes the Agency's elimination of Additional Condition 6 was dispositive.

In this opinion, the Board first provides background on the appeal, consisting of the procedural history and the undisputed relevant facts. Next, the Board discusses the applicable legal framework, including standard of review and burden of proof. The Board then analyzes and provides its reasons for denying the permit appeal, which concerns water quality monitoring and lead compliance sampling, as well as the interlocutory appeal.

PROCEDURAL HISTORY

The majority of the procedural history in this case is described in detail in the October 22, 2022 Board order. *See Aqua Illinois, Inc. v. IEPA*, PCB 23-12, slip op. at 2 (October 22, 2022) (Order). In that Order, the Board granted Aqua's motions to voluntarily withdraw the permit appeal as to Additional Conditions 3, 4, and 5, and denied the Agency's motion to dismiss the appeal as to Additional Condition 6.

Appeal as to Additional Condition 6

On July 8, 2022, Aqua filed its original petition for review. On August 2, 2022, the Agency moved to dismiss the appeal as to Additional Condition 6. Aqua filed its response on August 16, 2022. On August 22, 2022, the Agency filed its reply in support of its motion. On August 30, 2022, the Agency filed a motion for leave to supplement its reply, to which it attached its supplemental reply. On September 13, 2022, Aqua filed its response opposing the Agency's motion. By order of September 22, 2022, the Board denied the Agency's motion to dismiss the appeal as to Additional Condition 6.

Also on August 22, 2022, Aqua waived the statutory decision deadline to December 15, 2022.

The Record

On August 2, 2022, the Agency filed a motion to extend the deadline to file the record. On August 3, 2022, Aqua filed a response opposing the Agency's motion. On August 8, 2022, the Agency filed a motion for leave to reply. On August 18, 2022, the Board's hearing officer granted the Agency's motion in part and denied it in part, with the deadline extended to August 26, 2022.

On August 25, 2022, the Agency filed its record on appeal. On September 2, 2022, the Agency filed a motion for leave to file an amended record. On September 16, 2022, Aqua filed its response. By order of September 19, 2022, the hearing officer denied the Agency's motion and directed the Agency to file the entire record of its permit determination by September 23, 2022. On September 23, 2022, the Agency filed its complete 621-page record (R.).

Hearing

Hearing was held² on September 28, 2022. As an initial matter, the hearing officer denied Aqua's pending September 27, 2022 motion *in limine* to limit the use of certain nitrate documents (Mot. Lim.).

The Agency presented direct testimony of one witness at hearing: David Cook, of the Agency's public water supplies permit section.

On October 21, 2022, the Agency and Aqua filed post-hearing opening briefs (Ag. Brief and Aqua Brief, respectively). On November 9, 2022, the Agency and Aqua filed post-hearing response briefs (Ag. Resp. Brief and Aqua Resp. Brief, respectively). No public comments were filed.

Aqua's Motion for Interlocutory Appeal

On October 17, 2022, Aqua filed a motion for interlocutory appeal of the hearing officer's order on its motion *in limine* (Mot. Int. App.). On October 31, 2022, the Agency filed its response (Resp. Int. App.). Aqua's interlocutory appeal, the Agency's response and the Board's ruling are addressed below.

FACTS

Aqua is the owner and operator of the UP System. Pet. at 7. The UP System serves approximately 7,000 residents through approximately 1,975 connections in the Village of University Park, in Cook and Will Counties, Illinois. *Id.* Aqua is a medium-sized public water supplier system. See 35 Ill. Adm. Code 611.350(b). In 2017, Aqua switched its source water for the UP System from groundwater wells to Kankakee River surface water. Tr. at 28-29; *see also*, Pet. at 7. After the switch, the lead action level for the UP System was exceeded for the first six-month compliance period of 2019. Pet. at 7. In response to elevated lead levels found during May 2019 sampling from homes in the UP System, in June 2019, Aqua provided a public "do not consume notice" to University Park residents. Aqua also introduced a new blended orthophosphate as corrosion control technology to re-establish protective scale on pipes to prevent lead from further leaching into the drinking water of the UP System residents. *See* Pet. at 3-4; R. at 604-609.

On August 16, 2019, the Attorney General on behalf of the People at the request of the Illinois Environmental Protection Agency and the Will County State's Attorney, filed a four-count complaint against Aqua in Will County Circuit Court (No. 19 CH 1208). The complaint alleges violations of the Act, Board regulations, and Aqua's construction and operating permits due to Aqua's lead action level exceedances in the UP System. R. at 603. On November 1, 2019, the parties entered into an Agreed Interim Order. R. at 601-628. The Agreed Interim Order set heightened compliance monitoring requirements for Aqua in response to the lead action level exceedances that were the subject of the circuit court complaint. *See id.*

² The Board cites the hearing transcript as "Tr. at ___."

On July 30, 2021, the Agency issued Aqua Construction Permit No. 0071-FY2022 (Permit) authorizing the switch of corrosion control treatment to zinc orthophosphate for the UP System. Pet. at Exh. D. The Permit also imposed seven Additional Conditions on Aqua for the change in the corrosion control technology for the UP System. *Id.* Additional Condition 6 required Aqua to collect between 40 and 60 lead compliance samples from approved individual sample site locations each month beginning 30 days after the issuance of the operating permit for the project. *Id.* at par. 6. Consideration was to be given to the highest past lead results and geographic representation, as well as sampling when CSMR (chloride-to-sulfate mass ratio) and nitrate results are highest for the month. *Id.*

On March 24 and March 28, 2022, Aqua submitted a letter to the Agency requesting a reduction in the compliance sampling requirements of Additional Condition 6 to a frequency of 40 samples from compliance pool sample site locations once per six-month compliance sampling period, starting in April of 2022, with future reductions in monitoring consistent with 35 Ill. Adm. Code 611.356(d)(4). R. at 3. Aqua's March 2022 requests asserted that the Permit should be altered because it had met the lead action level for the July-December 2021 compliance monitoring period. R. at 1. Aqua stated it had identified zinc orthophosphate as the optimal corrosion control treatment for the UP System and recommended it to the Agency on February 15, 2022t. *Id.* On June 29, 2022, the Agency issued its determination in a supplemental exception permit (SEP) terminating Additional Condition 6 of the Permit issued July 30, 2021, because it was duplicative of the lead compliance monitoring requirement of the Agreed Interim Order. R. at 16. The Agency further denied Aqua's request to modify Additional Condition 6, because the Agreed Interim Order requires monthly monitoring. *Id.* The Agency did not cite the Act or Board regulations for denying Aqua's request. The Agency stated that eliminating the permit condition did not eliminate the monthly lead compliance monitoring required by the Agreed Interim Order. *Id.*

MOTION FOR INTERLOCUTORY APPEAL

Legal Background

The Board regulations at Section 105.116(a), provide in pertinent part:

The State agency must file with the Board the entire record of the Agency's or OSFM's decision, as applicable, within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the Agency or OSFM wishes to seek additional time to file its record, it must file a request for extension before the date on which its record is due to be filed. 35 Ill. Adm. Code 105.116(a).

The Board regulations at Section 105.212 provide as follows:

- a) The Agency must file its entire Agency record of decision with the Clerk in accordance with Section 105.116.

- b) The Agency record must include:
- 1) Any permit application or other request that resulted in the Agency's final decision;
 - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
 - 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
 - 4) The Agency public hearing record of any Agency public hearing that may have been held before the Agency, including any transcripts and exhibits; and
 - 5) Any other information the Agency relied upon in making its final decision. 35 Ill. Adm. Code 105.212.

Additionally, Section 101.626 provides, in pertinent part:

In compliance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part or 35 Ill. Adm. Code 105.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence. 35 Ill. Adm. Code 101.626.

The Board's review of permit appeals is limited to information before the Agency during the Agency's statutory review period, and is not based on information developed by the permit applicant, or the Agency, after the Agency's decision. Prairie Rivers Network v. IEPA and Black Beauty Coal Company, PCB 01-112 (Aug. 9, 2001), *aff'd*, 335 Ill. App. 3d 391, 401 (4th Dist. 2002); Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, (5th Dist. 1987). The Board as a technical body is able to make determinations in permit appeals based on the entire record of the permit application. *See*, 35 Ill. Adm. Code 105.116 This includes any information the Agency relied on in making its final decision. *See*, 35 Ill. Adm. Code 105.212.

Discussion

Aqua's motion objects to and appeals the hearing officer's ruling on the motion *in limine* to limit the use at hearing of the Nitrate Documents included in the Record filed by the Agency on September 23, 2022. Aqua seeks to exclude the Nitrate Documents from any references,

testimony, or argument in this matter. Mot. Int. App. at 7. The Agency responded that it has no position on Aqua's Interlocutory Appeal. Ag. Resp. Int. App. at 4.

Aqua argues it will be prejudiced should the Nitrate Documents be admitted for use at hearing. "[T]he Nitrate Documents are neither material nor relevant to the Hearing with respect to Additional Condition No. 6 and would be substantially outweighed by the undue prejudice caused to Aqua." Mot. Int. App. at 6. Aqua further asserts that it was "deprived [...] of the rights to question Respondent's personnel on the Nitrate Documents at deposition and to prepare a rebuttal witness regarding the Nitrate Documents for Hearing, because Respondent excluded those documents from the record until the eve of Hearing." *Id.* Aqua asserts the Agency "added the Nitrate Documents to the record because they were mentioned during Mr. Cook's Deposition and that [IEPA] feared that Aqua would submit a motion to include them." *Id.* Aqua took the deposition of Mr. Cook on September 19, 2022. *See* Mot. Int. App. at 5.

At hearing, counsel for the Agency testified that it included the Nitrate Documents in the Record filed on September 23, "in accordance with the September 19 [hearing officer] order and as a result of the questioning during the depositions that occurred." Tr. at 9. As noted by the Agency in its response, the Nitrate Documents were not used at hearing. *See* Ag. Resp. Int. App. at 4. The Agency further notes that Aqua did not object to the inclusion of the Nitrate Documents in the Record. Ag. Resp. Int. App. at 3 (citing Tr. at 7). Neither party used the Nitrate Documents in their post-hearing briefs or response briefs.

Board Finding

The Board is not persuaded by Aqua's argument that it was denied the ability to prepare cross-examination for the September 28 hearing on the Nitrate Documents because they were first filed with the complete record on September 23, 2022. The Board is also not persuaded that taking Mr. Cook's deposition on September 19, 2022 in reliance on the Agency's incomplete record filed in August denied it the ability to prepare cross-examination for hearing on the Nitrate Documents. The Board finds that the Agency properly included the Nitrate Documents in the Record filed on September 23, 2022, as instructed by the September 19, 2022 hearing officer order.

The Nitrate Documents consist of emails between Agency employees, including Mr. Cook. These emails circulated between November 4th and 6th, 2021. *See* R. at 581-587. The Nitrate Documents contain nitrate monitoring data for the Kankakee River, including data for March 8, 2021 through August 30, 2021. *Id.* at 581. This timeframe is within the six-month monitoring period pertinent to the Agency's June 29, 2022 determination letter. Pet., Exh. A. Additional Condition 6 sets lead compliance sampling parameters and states that, "[c]onsideration should also be given to sampling when CSMR and nitrate results are the highest for the month, typically following rain events. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, 601.101, 611.352 and the Chemical Change Description dated July 15, 2021)." Permit at 6.

Based on the dates of the Nitrate Documents and discussion amongst Agency personnel, including Mr. Cook, it is clear that the Nitrate Documents were part of the information before the

Agency during its statutory review period. *See*, R. at 581-587. They pertain to sampling requirements set by Additional Condition 6. *See* Permit at 6. They are therefore material, relevant and would be relied upon by prudent persons in the Agency's determination regarding Additional Condition 6.

While Aqua is correct that the Agency did not cite the Nitrate Documents as the reason it denied Aqua's requested modification of Additional Condition 6 in its determination letter, the Board's rules require the Agency to file the entire record of its decision on appeal for the Board's review. 35 Ill. Adm. Code 105.116(a). As the Nitrate Documents were clearly part of the lead compliance sampling information before the Agency in making that determination, the Agency properly included the Nitrate Documents in the Record.

Accordingly, the Board denies Aqua's motion for interlocutory appeal of the hearing officer's order denying its motion *in limine* to limit use of the Nitrate Documents at hearing. The Board affirms the hearing officer's September 28, 2022 order denying the motion.

LEGAL FRAMEWORK OF PERMIT APPEAL

Under the Act, the Agency is the permitting authority responsible for administering Illinois' regulatory programs to protect the environment. Section 39(a) of the Act sets forth the standard concerning the Agency's authority to act upon permit applications:

When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. 415 ILCS 5/39(a) (2020).

When the Agency denies a permit under this Section, the Agency shall provide the applicant the reasons for the denial and include:

- (i) the Sections of this Act which may be violated if the permit were granted;
- (ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;
- (iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and
- (iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted. 415 ILCS 5/39(a)(2020).

If the Agency refuses to grant or grants with conditions a permit under Section 39 of the Act, a permit applicant "may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the Board to contest the decision of the Agency." 415 ILCS 5/39, 40(a)(1) (2020); 35 Ill. Adm. Code 105.204, 602.118. The Board's review of permit appeals is limited to information before the Agency during the Agency's statutory review period, and is not based on information developed by the permit applicant, or

the Agency, after the Agency's decision. Prairie Rivers Network v. IEPA and Black Beauty Coal Company, PCB 01-112 (Aug. 9, 2001), *aff'd.*, 335 Ill. App. 3d 391, 401 (4th Dist. 2002); Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738 516 N.E.2d at 280 (5th Dist. 1987).

The only issues relevant on appeal from denial of a permit are those related to “whether the Agency correctly interpreted and administered regulations when it denied petitioners’ permit and application.” City of Decatur and Sanitary District of Decatur v. Environmental Protection Agency, 23 IPCB 127, 130 (July 22, 1976).

STANDARD OF REVIEW

The question before the Board in permit appeal proceedings is whether the applicant proves that the application, as submitted to the Agency, demonstrated that no violation of the Act would have occurred if the requested permit had been issued. Joliet Sand & Gravel Co. v. PCB, 163 Ill. App. 3d 830, 833 (3rd Dist. 1987). The Agency's denial letter frames the issues on appeal. ESG Watts, Inc. v. PCB, 286 Ill. App. 3d 325 (3rd Dist. 1997). Section 39(a) requires that the Agency specifically set forth the applicable sections of the Act and [Board] regulations upon which it based its denial. Centralia at 6 (May 10, 1990 Int. Order) (citing City of Metropolis v. IEPA, PCB 90-8 (Feb. 22, 1990)).

In a permit appeal brought by the permit applicant, the burden of proof is on the permit applicant. 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 105.112(a). The burden of proof is on the applicant to demonstrate that the reasons for denial detailed by the Agency in its denial letter are inadequate to support a finding that permit issuance will cause a violation of the Act or regulations. Centralia Environmental Services, Inc. v. IEPA, PCB 89-170 at 8 (Oct. 25, 1990) (citing Technical Services Co., Inc. v. IEPA, PCB 81-105 at 2 (November 5, 1981)). The standard of review in a permit appeal is the preponderance of the evidence.

ISSUES

The sole issue before the Board is whether Aqua has shown that no violation of the Act or Board regulations would have occurred if its requested modification of Additional Condition 6 were granted.

DISCUSSION

Additional Condition No. 6 Monitoring Requirements

The Agency's determination states that it eliminated Additional Condition 6 for being “duplicative” of a monitoring requirement in the Agreed Interim Order entered in the pending civil action against Aqua. The Agency stated:

6. Additional condition #6 of construction permit 0071-FY2022 is terminated by this Special Exception Permit as it is duplicative to the lead compliance monitoring requirement in the Agreed Interim Order. The elimination of this condition does not eliminate the monthly lead compliance monitoring

that is required pursuant to the Agreed Interim Order (People of the State of Illinois, No. 19 CH 1208, November 1, 2019). R. at 16.

In pertinent part, the Agreed Interim Order requires Aqua to conduct monthly sampling to determine its compliance with lead action level requirements. Agr. Int. Ord. at 8, ¶ 14 (Oct. 29, 2019). The Agreed Interim Order requires Aqua to comply with this condition until the Agency gives Aqua written approval that the monthly sampling is no longer necessary. *Id.*

The Agency's June 29, 2022 determination states that Aqua's request to modify Additional Condition 6 of the Permit was denied based on the Agreed Interim Order's requirement of monthly monitoring. R. at 16.

Aqua argues that the requirements of Additional Condition 6 are not necessary to accomplish the purpose of the Environmental Protection Act (Act) or Board regulations, and are otherwise arbitrary and capricious. Pet. at 26. Aqua further argues that the Agency improperly relied on the Agreed Interim Order as the basis for setting the monthly monitoring requirements of Additional Condition 6. According to Aqua, the proper authority is the Board's Lead and Copper Rule, 35 Ill. Adm. Code 611.350-611.361. Pet. at 23. Aqua asserts it has shown the monthly sampling requirements of Additional Condition 6 are no longer necessary by its March 24, 2022 letter to the Agency. In that letter, Aqua indicates it met the lead action level for one six-month compliance monitoring period under the Lead and Copper Rule following a lead action level exceedance. Aqua adds that it has identified the optimal corrosion control treatment (OCCT) for the UP System as of February 15, 2022. Pet., Exh. D; Pet. at 11.

In its post-hearing brief, the Agency argues that the Agreed Interim Order required, and still requires, Aqua to conduct the monthly compliance monitoring. Ag. Brief pp. 1-2. The Agency argues that Aqua failed to present evidence in support of its appeal, and therefore failed to satisfy its burden of proof that no violation of the Act or Board regulations would have occurred if Aqua's March 2022 requests to eliminate the monthly compliance sampling requirement had been granted. Specifically, the Agency states that Aqua's request to reduce the monthly monitoring requirement should be denied because Aqua's permit modification request failed to show:

1. That the water in the UP System was assuredly safe (Ag. Brief at pp. 9-10);
2. That the UP System had met the Lead Action Level for two consecutive six-month periods (*Id.* at pg. 9);
3. That the Agency had not yet approved the optimal corrosion control treatment recommendation Aqua submitted on February 15, 2022 (*see id.* at pp. 9-10); and
4. Adequate bases for the Agency to find, as required by the Agreed Interim Order, that "additional sampling [was] no longer necessary" (*see id.* at pp. 10-11).

Legal Background

Section 39(a) of the Act requires that, within 90 days of the filing of the application, if the Agency denies a permit, the Agency is required to provide the applicant with a detailed statement of the reasons for denying the permit. Centralia Environmental Services, Inc. v. IEPA,

PCB 89-170 at 5 (May 10, 1990 Int. Order); 415 ILCS 5/39(a) (2020). Section 39(a) further provides:

Such statements shall include, but are not limited to the following: (i) the Sections of [the] Act which may be violated if the permit were granted; (ii) the provision of the [Board] regulations, promulgated under [the] Act, which may be violated if the permit were granted; (iii) the specific type of information, if any, which the Agency deems the applicant did not provide to the Agency; and (iv) a statement of specific reasons why the Act and the [Board] regulations might not be met if the permit were granted. *Id.* at (i)-(iv) (2020).

If the Agency fails to act within the specified time period, the applicant may deem the permit issued. 415 ILCS 5/39(a).³ Terminating a site-specific permit condition does not relieve the permittee of the requirement to comply with the Act and Board regulations.

As noted above, the Agency's denial letter frames the issues on appeal. Pulitzer Community Newspapers, Inc. v. IEPA, PCB 90-142 (Dec. 20, 1990). In its review, the Board cannot “plug in” reasons for an Agency denial of a permit modification request that were not in the Agency’s determination. *See Centralia Environmental Services v. IEPA*, PCB 89-170 (May 10, 1990 Int. Order).

Board Discussion and Finding

The Agency’s determination letter eliminated Additional Condition 6 from the Permit: “Additional condition #6 of construction permit 0071-FY2022 is terminated by this Special Exception Permit.” R. at 16 (emphasis added). The Agency removed the heightened monthly lead compliance monitoring as a requirement from the Permit. The Board disagrees with the Agency that the Agreed Interim Order was incorporated by reference into the SEP. *See*, Ag. Brief at III. There is no statement in the SEP that incorporates the Agreed Interim Order by reference.

However, though the Permit no longer requires the heightened monthly lead compliance sampling of Additional Condition 6, Aqua’s obligation to comply with the monitoring conditions

³ In the Interim Order in *Centralia*, the Board found that IEPA had not satisfied the Section 39(a) requirements to specify its reasons under the Act and Board regulations for denying petitioner CESI’s permit modification request. The Board further found that because IEPA failed to perform its statutory duty, CESI was unable to gather evidence to support its case, and the Board was unable to perform its duty in the permit review, as it would exceed its statutory authority and violate principles of fundamental fairness if it were to “plug in” a section of the Act or regulations to support an Agency denial. Accordingly, the Interim Order remanded the permit to IEPA to amend its determination letter. Unlike this case, in *Centralia* the contested permit conditions that CESI requested to modify and which for which IEPA failed to give proper basis for its denial were not eliminated from the permits. Further, in *Centralia*, CESI waived the decision deadline a second time, enabling the Board to take a non-final action and remand the matter to IEPA in the Interim Order.

of the Agreed Interim Order exists independent of its obligation to comply with the provisions of the Act and Board regulations and the conditions of the Permit and subsequent SEPs. The Agency's removal of Additional Condition 6 has no bearing on the requirement that Aqua comply with the Agreed Interim Order. The Board has no jurisdiction over the Agreed Interim Order issued by the Circuit Court and therefore makes no finding on whether the Agency has approved a change of the Agreed Interim Order's conditions.

Finally, though the Agency's removal of Additional Condition 6 removed the heightened lead compliance monitoring requirements set by it from the Permit, Aqua remains subject to the requirements of the Act and Board regulations for a public water supplier of its size. *See generally*, 35 Ill. Adm. Code 601, 611.

CONCLUSION

The Board finds that the Agency's determination issued in the June 29, 2022 SEP removes Additional Condition 6 from the Permit. Accordingly, Aqua's appeal of the Agency's denial of its request to modify Additional Condition 6 is moot, because the contested condition no longer exists in the Permit.

The Board also finds that the Nitrate Documents were properly included in the Record of the Agency's decision. The Board accordingly upholds the hearing officer's order denying the motion in limine to limit their use at hearing, and denies petitioner's interlocutory appeal of the hearing officer order.

ORDER

The Board finds that Aqua's appeal of the Agency's June 29, 2022 denial of Aqua's request to modify Additional Condition 6 of its public water supply construction permit is moot, as the condition no longer exists in the Permit. The Board also affirms the hearing officer's order denying Aqua's motion in limine to limit the use of the Nitrate Documents at hearing.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 15, 2022, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board