

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF ELECTRONIC FILING**

To: *See Attached Service List*

PLEASE TAKE NOTICE that on the 31<sup>st</sup> day of August, 2022, I caused to be filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the attached Respondent's Motion to Dismiss the Permit Appeal as to Additional Condition Nos. 4 and 5 as Moot, a true and correct copy of which is attached hereto and hereby served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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

**SERVICE LIST**

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

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren Street, Suite 630  
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[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)  
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Sarah.Lode@afslaw.com  
*Counsel for Aqua Illinois, Inc.*  
(Via Email)

**CERTIFICATE OF SERVICE**

I, Ann Marie A. Hanohano, an Assistant Attorney General, hereby certify that on the 31<sup>st</sup> day of August, 2022, I caused to be served the foregoing Notice of Electronic Filing and Respondent's Motion to Dismiss the Permit Appeal as to Additional Condition Nos. 4 and 5 as Moot upon the parties named on the attached Service List, via e-mail or electronic filing as indicated.

/s/ Ann Marie A. Hanohano  
Ann Marie A. Hanohano  
Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
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**RESPONDENT’S MOTION TO DISMISS THE PERMIT APPEAL  
AS TO ADDITIONAL CONDITION NOS. 4 AND 5 AS MOOT**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Respondent”), by and through the Attorney General of the State of Illinois, KWAME RAOUL, and pursuant to 35 Ill. Adm. Code 101.500, 101.506, and 105.108(e), hereby moves for the dismissal of Petitioner’s Permit Appeal as to Additional Condition No. 4 and Additional Condition No. 5 (the “Motion”). In support of its Motion, Respondent states as follows:

1. Section 105.108(e) of the Illinois Pollution Control Board’s (“Board”) General Rules provides that “[a] petition is subject to dismissal if the Board determines that: . . . e) [o]ther grounds exist that bar the petitioner from proceeding.” 35 Ill. Adm. Code 105.108(e).

2. Pursuant to Section 101.506 of the Board’s General Rules, “[a]ll motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, *unless the Board determines that material prejudice would result.*” 35 Ill. Adm. Code 101.506 (emphasis added).

3. Although more than 30 days have passed since the filing of the above-captioned appeal, material prejudice will result unless the Board considers this Motion, as more fully described herein. *See* 35 Ill. Adm. Code 101.506.

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

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

*ESG Watts*, slip op. at p. 5.

5. On June 29, 2022, Respondent issued a Special Exception Permit to Petitioner, a true and correct copy of which is attached hereto as Exhibit A (the “June 2022 Permit”).

6. The June 2022 Permit provides, pertaining to Additional Condition No. 4, that:

...This additional condition expires after the Agency sets OWQP ranges. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, 604.140, 611.352(a), 611.352(f), the Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Supplies, USEPA March 2016 (Updated), and the Chemical Change Description dated July 15, 2021)

(Exhibit A at p. 2, ¶ 4 (underlining in original).)

7. The June 2022 Permit provides that Additional Condition No. 5 “expires after the Agency sets OWQP ranges.” (Exhibit A at p. 2, ¶ 5 (underlining in original).)

8. On July 8, 2022, Petitioner filed its Petition for Review of the Illinois Environmental Protection Agency’s Special Exception Permit Decision and Motion for Partial Stay (“Permit Appeal”)<sup>1</sup>. Pertinent to this Motion, Petitioner “requests that the Board remand the

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<sup>1</sup> On August 8, 2022, Respondent filed a Motion to Dismiss Petitioner’s Permit Appeal as to Additional Condition No. 3; and subsequently, on August 12, 2022, Petitioner filed a Motion to Voluntarily Withdraw Petition for Review as to Additional Condition No. 3.

2022 Permit to IEPA to require IEPA to omit” Additional Condition Nos. 4 and 5. (Permit Appeal at ¶ 44.)

8. On August 26, 2022, an Order was entered setting the hearing in this Permit Appeal on September 28 and 29, 2022.

9. On August 30, 2022, Illinois EPA issued a Special Exception Permit to Petitioner. (*See* Verification of David Cook, a true and correct copy of which is attached hereto as Exhibit B, at ¶ 3.) With Illinois EPA’s issuance of such permit, Illinois EPA set Optimal Water Quality Parameter (OWQP) ranges for Petitioner’s University Park public water system. (*Id.* at ¶ 4.)

10. Due to the issuance of the August 30, 2022, Special Exception Permit, Additional Condition Nos. 4 and 5 have expired.

11. Because Petitioner’s requested relief as to Additional Condition Nos. 4 and 5 is no longer necessary, the Permit Appeal as to Additional Condition Nos. 4 and 5 is moot. *See, e.g., GSF Energy, Inc. et al. v. IEPA*, PCB 90-219, slip. op. (Jan. 24, 1991).

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WHEREFORE, Respondent respectfully requests that the Board enter an order (i) granting Respondent's Motion, (ii) dismissing the Permit Appeal as to Additional Condition Nos. 4 and 5 as moot, and (iii) granting such other relief as the Board deems appropriate.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

/s/ Ann Marie A. Hanohano

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Senior Assistant Attorney General  
Ann Marie A. Hanohano  
Assistant Attorney General  
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	)	(Permit Appeal - Public Water Supply)
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**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
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EXHIBIT A





217/782-1724

SPECIAL EXCEPTION PERMIT

June 29, 2022

Ms. Melissa Kahoun  
Environmental Compliance Manager  
Aqua Illinois Water Company  
1000 South Schuyler Avenue  
Kankakee, IL 60901

Re: Aqua IL University Park (IL1975030)  
Request to Modify Permit Conditions for 0071-FY2022

Dear Ms. Kahoun:

The Illinois Environmental Protection Agency (Agency) has reviewed Aqua's two letters. The request in both letters was to modify additional condition #6 on Construction Permit 0071-FY2022 and to add a new additional condition #7. The March 24, 2022 letter was a request for supplemental permit and was received on March 31, 2022. The March 28, 2022 letter was a request for a special exception permit and was received on April 1, 2022. Both letters were reviewed together and logged into Permit Tracking using log number 2022-1072.

The letters were reviewed along with the data received from the additional conditions in construction permit 0071-FY2022. Pursuant to 35 Ill. Adm. Code 602.600 the Agency has decided to replace all the permit conditions to construction permit 0071-FY2022 for clarity and based upon the Lead and Copper Rule steps in the Part 611 regulations.

The conditions below supersede and replace the additional conditions in Construction Permit 0071-FY2022. The conditions are in the same order as the construction permit for clarity. Significant additions from the language in the construction permit are underlined.

ADDITIONAL CONDITIONS:

1. An operating permit was required prior to feeding zinc orthophosphate. The operating permit for permit number 0071-FY2022 was issued on August 3, 2021. This Special Exception Permit replaces the additional conditions in construction permit 0071-FY2022.

2. The zinc orthophosphate product must be NSF/ANSI 60 approved and contain a 1:10 Zn to PO<sub>4</sub> ratio. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.114, 604.105(g) and Chemical Change Description dated July 15, 2021.)

3. Optimal Water Quality Parameter (OWQP) ranges will be set after Optimal Corrosion Control Treatment (OCCT) is designated and the community water supply meets the lead action level in two consecutive six-month monitoring periods. The orthophosphate dose and residual shall be a minimum of 3 mg/L as PO<sub>4</sub>. The pH range shall be 7.4 to 8.0 at the Central Avenue Booster Station. The zinc range shall be 0.3 - 0.5 mg/L. (Section 18 of the Act 415 ILCS 5/18, 35 Ill. Adm. Code 602.114, 611.351(e) and the Chemical Change Description dated July 15, 2021)

4. Water quality monitoring must be conducted for the Aqua Illinois - University Park community water supply as described below and results submitted for each month to david.cook@illinois.gov within 10 days after the last day of the month. The submissions must include all water quality parameter monitoring done during the month including any monitoring not mentioned here.

The revised water quality monitoring requirements include daily monitoring for flow and orthophosphate at the Central Avenue Booster Pump Station, weekly monitoring for pH and nitrate at the Central Avenue Booster Pump Station, and quarterly monitoring at three locations for free chlorine, total chlorine, monochloramine, free ammonia, orthophosphate, pH, and alkalinity. In addition, quarterly monitoring at three locations is required for chloride, sulfate, CSMR (calculated value), nitrite, nitrate, iron, manganese, and zinc. Quarterly monitoring at one location is required for Total Organic Carbon (TOC).

Any water quality parameter monitoring conducted must be reported in a spreadsheet. The data are needed to set Optimal Water Quality Parameter (OWQP) ranges. This additional condition expires after the Agency sets OWQP ranges. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, 604.140, 611.352(a), 611.352(f), the Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Supplies, USEPA March 2016 (Updated), and the Chemical Change Description dated July 15, 2021)

5. Nitrate water quality monitoring must be conducted for the Aqua Illinois - Kankakee entry point to the distribution system on a weekly basis and results submitted to david.cook@illinois.gov within 10 days after the last day of the month. The nitrate water quality results must be reported in a spreadsheet. This additional condition expires after the Agency sets OWQP ranges. This is in addition to any monthly operating report requirements submitted to the Elgin Regional Office pursuant to Ill. Adm. Code, Title 35, Subtitle F, Section 604.165. (Section 18 and 19 of the Act 415 ILCS 5/18 & 19, 35 Ill. Adm. Code 602.114, and 611.352(f))

6. Additional condition #6 of construction permit 0071-FY2022 is terminated by this Special Exception Permit as it is duplicative to the lead compliance monitoring requirement in the Agreed Interim Order. The elimination of this condition does not eliminate the monthly lead compliance monitoring that is required pursuant to the Agreed Interim Order. (People of the State of Illinois, No. 19 CH 1208, November 1, 2019)

As the Agreed Interim Order requires monthly monitoring, Aqua's request to modify additional condition #6 is denied. The request to add a new additional condition #7 is denied, since it is moot based upon Agreed Interim Order that continues to require monthly lead compliance monitoring.

Sincerely,



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

cc: Donald Denault, Certified Operator  
Elgin Regional Office  
DPWS/CAS

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**RESPONDENT'S MOTION TO DISMISS THE PERMIT APPEAL  
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EXHIBIT B

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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AGENCY,	)	
	)	
Respondent.	)	

**VERIFICATION OF DAVID COOK**

I, David Cook, do state as follows:

1. I am currently employed by the Illinois Environmental Protection Agency (“Illinois EPA”) in Springfield, Illinois as a Permit Section Manager in the Division of Public Water Supplies.
2. The duties and responsibilities of my current position include, but are not limited to, issuing Special Exception Permits to public water suppliers in Illinois.
3. A true and correct copy of the Special Exception Permit that Illinois EPA issued to Aqua Illinois, Inc. (“Aqua”) for its University Park public water system on August 30, 2022 is attached hereto as Exhibit 1.
4. With Illinois EPA’s issuance of such permit, Illinois EPA set Optimal Water Quality Parameter (OWQP) ranges for Aqua’s University Park public water system.
5. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters

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

  
\_\_\_\_\_  
David Cook  
Illinois Environmental Protection Agency

DATED: August 30, 2022



**Special Exception Permit (SEP)**

(217) 782-1724

August 30, 2022

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

Re: **AQUA ILLINOIS – UNIVERSITY PARK (IL1975030)** – Optimal Water Quality Parameters

Dear Mr. Carter:

Aqua Illinois – University Park has taken steps to reduce the lead and copper levels in their community water supply. The Optimal Corrosion Control Treatment (OCCT) was the addition of zinc orthophosphate approved by a Special Exception Permit dated August 8, 2022.

To ensure that the corrosion control treatment is correctly maintained, the Illinois Environmental Protection Agency (Agency) is required to set a minimum value or range for the water quality parameters and may require additional water quality monitoring (35 Ill. Adm. Code Sections 611.351(b) and 611.352(a and f)). The optimal water quality parameter (OWQP) ranges and monitoring frequencies that are required to be met are listed below:

**Optimal Water Quality Parameters and Associated Ranges/Minimum:**

Entry Point and Description	WQP that must be measured	Approved Ranges/Minimum	Monitoring Frequency
CC01, connection to Kankakee	pH	7.4 – 7.8	At least once every two weeks
	Orthophosphate	3 mg/L or higher (as PO4)	At least once every two weeks
	Nitrate	No range – report test result	At least once every two weeks

Distribution System (Tap Samples)	WQP that must be measured	Approved Ranges/Minimum	Monitoring Frequency
At least 3 sample sites representing the entire distribution system	pH	7.4 – 7.8	At least once every three months
	Orthophosphate	3 mg/L or higher (as PO4)	At least once every three months
	Total chlorine residual	2 mg/L or higher	At least once every three months
	Zinc	0.3 mg/L or higher	At least once every three months

2125 S. First Street, Champaign, IL 61820 (217) 278-5800  
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120  
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000  
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200  
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022  
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

IL1975030 Aqua Illinois University Park

OWQP ranges – August 30, 2022

Page 2 of 2

Optimal water quality parameter values at or above minimum levels or within ranges approved by the Agency are required to be maintained. The values outside of approved ranges from each sample collected are known as excursions. The total number of excursions must be reported for each six-month monitoring period to the Agency. (35 Ill. Adm. Code Section 611.352(g)(1)). Compliance will commence for these OWQP ranges beginning with the next six-month monitoring period that starts January 1, 2023. OWQP monitoring must continue until the issuance of a new Special Exception Permit. (35 Ill. Adm. Code 602.600 and 611.351(b))

The “Illinois Environmental Protection Agency Compliance with the Water Quality Parameter (WQP) Ranges Certification of Results” form must be completed and submitted to the Illinois Environmental Protection Agency, Bureau of Water, Drinking Water Compliance Unit, Mail Code #19, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, IL 62794-9276 **within 10 days** after the end of each six-month monitoring period. The form may be emailed to [epa.pwscompliance@illinois.gov](mailto:epa.pwscompliance@illinois.gov) instead.

All test results except those performed by a certified laboratory must be included with the monthly operating reports submitted to the Agency’s Elgin Regional Office. Measure pH with a field instrument that is calibrated according to the manufacturer’s instructions.

The Agency is required to explain the basis for the decisions in this SEP according to 35 Ill. Adm. Code 611.352(f)(4). The orthophosphate and pH monitoring and the additional monitoring for nitrate, zinc, and chlorine residual are necessary to ensure that corrosion control treatment is maintained as required by 35 Ill. Adm. Code 611.351(b). The ranges for pH, orthophosphate, total chlorine residual, and zinc are based upon the results of follow-up monitoring that was done as a condition of construction permit #0071-FY2022. The lack of a range for nitrate is due to the uncertainty regarding at what value nitrate can cause an increase in lead results. The lead compliance sampling results and the spreadsheet of water quality results supplied by Melissa Kahoun on July 10, 2022 were reviewed for this SEP. The OWQP parameters are known or have been mentioned in technical presentations to the Agency on March 24, 2020, July 1, 2021, July 14, 2021, and October 29, 2021 to potentially affect lead release. The Agency will need the water quality parameter monitoring data in case of future high lead results. The frequency is based upon the requirements for community water supplies that must do water quality monitoring.

If you have any questions regarding the optimal water quality control parameters set in this SEP, please feel free to contact me at 217/782-1724.

Sincerely,



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

cc: Melissa Kahoun, Aqua Environmental Compliance Manager  
DPWS/FOS – Springfield Regional Office