

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **PETITIONER’S RESPONSE AS TO**

ADDITIONAL CONDITION NOS. 4 AND 5 and **CERTIFICATE OF SERVICE**, copies are which are herewith served upon you.

Dated: September 14, 2022

/s/ Sarah L. Lode
One of its Attorneys

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PETITIONER’S RESPONSE
AS TO ADDITIONAL CONDITION NOS. 4 AND 5

Petitioner Aqua Illinois, Inc. (“Aqua”), by and through its counsel, ArentFox Schiff, LLP, responds to Respondent’s Motion to Dismiss the Permit Appeal as to Additional Condition Nos. 4 and 5 as Moot (the “Motion to Dismiss”) as follows:

1. Through Additional Condition Nos. 4 and 5 of the 2022 Permit, the IEPA impermissibly sought to impose system monitoring requirements beyond what is required by the Lead and Copper Rule until after IEPA “sets OWQP ranges” regardless of the fact that the UP Water System had already met the lead action level for two consecutive six-month monitoring periods.¹ (Petition for Review at ¶ 39).

2. Aqua appealed Additional Condition Nos. 4 and 5 of the 2022 Permit because the monitoring required by those additional conditions was not necessary to accomplish the purpose of the Act or the Board’s regulations (including the Lead and Copper Rule) and was otherwise arbitrary and capricious. (*Id.* at ¶¶ 42, 43).

¹ Defined terms used herein have the same meaning as in Aqua’s Petition for Review.

3. The IEPA implicitly acknowledged the correctness of Aqua's position—that the monitoring required by Additional Condition Nos. 4 and 5 was not necessary to accomplish the purpose of the Act or Board's regulations—by issuing a Special Exception Permit for the UP System on August 30, 2022, in which the agency set OWQP ranges without the benefit of monitoring results required by Additional Condition Nos. 4 or 5 of the 2022 Permit. (*See Exhibit B to Motion to Dismiss.*)

4. As the OWQP ranges have now been set and Additional Condition Nos. 4 and 5 of the 2022 Permit have expired, Aqua voluntarily moves to withdraw the Petition for Review as to Additional Condition Nos. 4 and 5.²

For the foregoing reasons, Aqua respectfully moves to voluntarily withdraw the Petition for Review as to Additional Condition Nos. 4 and 5 and submits that the Board grant this request and such other relief as the Board deems appropriate.

Respectfully submitted,

Aqua Illinois, Inc.

Dated: September 14, 2022

/s/ Daniel J. Deeb
One of its Attorneys

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² Respondent filed its Motion to Dismiss as to Additional Conditions Nos. 4 and 5 within a day of the IEPA's issuance of the August 30, 2022 Special Exception Permit and without asking Petitioner whether it would voluntarily withdraw its appeal as to those additional conditions, just as Respondent did with respect to Additional Condition No. 3.

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Sarah.Lode@afslaw.com

Attorneys for Aqua Illinois, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 14th day of September, 2022:

I have electronically served a true and correct copy of Petitioner's Response as to Additional Condition Nos. 4 and 5, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

To: Don Brown Clerk of the Board Illinois Pollution Control Board 60 E. Van Buren St. Suite 630 Chicago, IL 60605 Don.Brown@illinois.gov	Ann Marie A. Hanohano Assistant Attorney General Environmental Bureau Office of the Illinois Attorney General 69 W. Washington St., 18th Floor Chicago, IL 60602 annmarie.hanohano@ilag.gov
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My e-mail address is Sarah.Lode@afslaw.com.

The number of pages in the e-mail transmission is 7.

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

/s/ Sarah L. Lode

Sarah L. Lode

Dated: September 14, 2022

Daniel J. Deeb
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