

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	PCB 2026-056
v.	)	
	)	(Special Exception Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Sara Terranova, Assistant Counsel Sara.Terranova@illinois.gov Thomas Saviski, Assistant Counsel Thomas.Saviski@illinois.gov Illinois Environmental Protection Agency 2520 West Iles Avenue P.O. Box 19276 Springfield, IL 62794-9276	Don Brown, Clerk of the Board Illinois Pollution Control Board 60 E. Van Buren St., Suite 630 Chicago, Illinois 60605 Don.Brown@illinois.gov PCB.Clerks@illinois.gov
--	--

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **PETITION FOR REVIEW OF AN ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S SPECIAL EXCEPTION PERMIT DECISION AND MOTION FOR PARTIAL STAY** and **CERTIFICATE OF SERVICE**, copies of which are herewith served upon you.

Dated: July 29, 2026

By: /s/ Daniel J. Deeb
Attorney for Aqua Illinois, Inc.

Daniel J. Deeb
Alex Garel-Frantzen
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, IL 60606
(312) 258-5500
Dan.Deeb@afslaw.com
Alex.Garel-Frantzen@afslaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	PCB 2026-056
v.	)	
	)	(Special Exception Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW OF AN ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY’S SPECIAL EXCEPTION PERMIT DECISION
AND MOTION FOR PARTIAL STAY**

Petitioner, Aqua Illinois, Inc. (“Aqua”), by and through its undersigned attorneys, and pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/40(a)(1), and Sections 105.200 *et seq.* of Title 35 of the Illinois Administrative Code, petitions the Illinois Pollution Control Board (the “Board”) for review of Conditions 1(d), 1(e), and 1(f) of the Special Exception Permit (the “Permit”) issued by the Illinois Environmental Protection Agency (“IEPA” or the “Agency”) on March 26, 2026, for the Aqua Illinois – Woodlawn public water supply system, PWS ID 1415050 (the “Woodlawn PWS”). Aqua also moves for a partial stay of those conditions pending resolution of this appeal, as explained in Part III below.

In support of this Petition and Motion for Partial Stay, Aqua states as follows:

I. BACKGROUND

1. IEPA issues special exception permits to public water systems in Illinois under the authority of the Board’s rules. 35 Ill. Adm. Code § 602.600.
2. Aqua is a public utility that owns and operates community water supply systems in Illinois, including the Woodlawn PWS located in Ogle County, Illinois. The Woodlawn PWS serves approximately 290 residents in Ogle County.

3. On March 26, 2026, IEPA issued the Permit to the Woodlawn PWS requiring the submission of Monthly Operating Reports. A true and correct copy of the Permit is attached hereto as **Exhibit A**.

4. The Permit requires the Woodlawn PWS to monitor and record free chlorine on a daily basis:

Condition 1(d): “Finished water test results, in mg/L, for free chlorine” (citing 415 ILCS 5/19 and 35 Ill. Adm. Code 604.725(b));

Condition 1(f): “Result of a chlorine residual test in mg/L for free chlorine taken in the distribution system. The location of these tests must be recorded” (citing 415 ILCS 5/19 and 35 Ill. Adm. Code 604.725(b)).

(collectively, the “Chlorine Conditions”). *See also* Permit Condition 1 (requiring “items listed” to “be recorded daily, unless otherwise noted, and included in the Monthly Operating Reports”).

5. The Permit also requires the Woodlawn PWS to monitor and record fluoride on a daily basis:

Condition 1(e): “Finished water test results for fluoride and other parameters as necessary for your treatment objectives” (citing 415 ILCS 5/19; 35 Ill. Adm. Code §§ 604.105(b), 604.900(b), and 604.1150(a)).

(the “Fluoride Condition”).

6. For years, the Woodlawn PWS has maintained a consistent and reliable monitoring practice: sampling free chlorine once per week and fluoride every weekday. At no point has the system ever been required – nor has IEPA previously deemed it necessary – to monitor and record free chlorine or fluoride on a daily basis.

7. On April 16, 2026, pursuant to Section 40(a)(1) of the Act and 35 Ill. Adm. Code §§ 105.206, 105.208(a), and 602.600(c) and within 35 days after service of the Permit, Aqua and the Agency jointly requested an extension of the appeal period by 90 days. The Board granted

the parties' request, extending the period to appeal the Permit up to and including July 29, 2026. Accordingly, this Petition is timely filed within the extended appeal period.

II. THE DAILY MONITORING IMPOSED BY THE CHLORINE AND FLUORIDE CONDITIONS LACK STATUTORY OR REGULATORY AUTHORITY

8. Aqua respectfully challenges the Chlorine and Fluoride Conditions because IEPA lacks statutory or regulatory authority to mandate daily monitoring where neither the Act nor Board regulations impose such a requirement.

9. The Chlorine Conditions cite 415 ILCS 5/19 and 35 Ill. Adm. Code § 604.725(b) as purported authority for requiring daily chlorine monitoring. Neither provision mandates daily monitoring.

a. Section 19 of the Act (415 ILCS 5/19) authorizes the Agency to request samples and reports from public water supplies but does not prescribe any monitoring frequency.

b. 35 Ill. Adm. Code § 604.725(b) requires community water supplies to “monitor chlorine residual to determine the amount and type of residuals existing at different points in the distribution system.” This provision establishes a monitoring obligation but is silent as to frequency. It does not displace – and must be read in harmony with – the specific monitoring requirements in 35 Ill. Adm. Code Part 611.

10. The applicable regulations expressly tie chlorine residual monitoring to total coliform sampling. 35 Ill. Adm. Code § 611.382(c)(1)(i) requires a community water supply using chlorine to “measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled.” *See also* 40 C.F.R. § 141.132(c)(1)(i) (identical federal requirement).

11. The Woodlawn PWS is required to sample total coliform once per month. Because chlorine residual monitoring must coincide with total coliform sampling, the applicable

regulatory requirement for chlorine residual monitoring at the Woodlawn PWS is monthly, not daily.

12. The Fluoride Condition cites 415 ILCS 5/19 and 35 Ill. Adm. Code §§ 604.105(b), 604.900(b), and 604.1150(a) as apparent authority for requiring daily fluoride monitoring. None of these provisions requires daily monitoring.

a. As explained above, Section 19 of the Act authorizes the Agency to request samples and reports but does not prescribe any monitoring frequency.

b. 35 Ill. Adm. Code § 604.105(b) sets design criteria for community water supply facilities but does not require fluoride monitoring or prescribe any monitoring frequency.

c. 35 Ill. Adm. Code § 604.900(b) sets water quality parameters for finished water but does not address fluoride.

d. 35 Ill. Adm. Code § 604.1150(a) requires fluoridation equipment to maintain fluoride content in finished water at 0.7 mg/L but does not require monitoring or prescribe any monitoring frequency.

13. The operative provisions governing fluoride monitoring require the Woodlawn PWS – a groundwater system – to collect only one fluoride sample per compliance period. 35 Ill. Adm. Code §§ 611.601(d)(2), 611.603(a)(1).

14. By requiring daily monitoring beyond what Parts 604 and 611 mandate, IEPA is impermissibly creating new substantive requirements through a permit condition rather than through proper notice-and-comment rulemaking as required under Sections 27 and 28 of the Act. 415 ILCS 5/27, 5/28.

15. Section 39(a) of the Act authorizes IEPA to impose permit conditions only “as may be necessary to accomplish the purposes of [the] Act” and that are “not inconsistent with the

regulations promulgated by the Board.” 415 ILCS 5/39(a). Where a permittee demonstrates that a condition exceeds regulatory minimums and lacks site-specific support, the Board will strike or modify it. *See IEPA v. Jersey Sanitation Corp.*, 336 Ill. App. 3d 582, 593 (4th Dist. 2003); *Marathon Petroleum Co. v. IEPA*, PCB 88-179 (July 27, 1989) (striking quarterly groundwater monitoring condition where the applicable regulation required only semi-annual monitoring); *City of Morrison v. IEPA*, PCB 79-144 (Oct. 4, 1979) (holding that daily monitoring would “alone constitute an arbitrary and unreasonable hardship” and reducing the required frequency to quarterly).

16. The Chlorine and Fluoride Conditions are not necessary to accomplish the purposes of the Act. They impose a monitoring frequency that exceeds applicable regulatory requirements without any site-specific justification set forth in the Permit and are therefore arbitrary and capricious.

III. MOTION FOR PARTIAL STAY

17. Aqua respectfully requests that the Board stay the effectiveness of Conditions 1(d), 1(e), and 1(f) pending final resolution of this Petition.

18. Aqua does not seek a stay of the remaining conditions of the Permit. The unchallenged Permit provisions may remain effective during the pendency of this appeal.

19. A partial stay is warranted because compliance with daily chlorine and fluoride monitoring would impose an unreasonable hardship on Aqua. Daily monitoring would require Aqua to incur significant additional expense, including the cost of hiring additional staff dedicated to the Woodlawn PWS.

20. The hardship of requiring daily monitoring pending resolution of this appeal far outweighs any incremental benefit. The contested daily frequency exceeds applicable regulatory

minimums, and Aqua's current sampling practices already provide robust monitoring coverage sufficient to protect public health.

WHEREFORE, Petitioner Aqua Illinois, Inc. respectfully requests that the Board: (1) grant a stay of Conditions 1(d), 1(e), and 1(f) of the Permit pending final resolution of this Petition or, if this Petition is granted, IEPA's issuance of a corrected permit; (2) grant review of IEPA's issuance of the Permit; and (3) remand the Permit to IEPA for reissuance consistent with applicable law and this Petition. During any stay, Aqua will continue to operate in accordance with the remaining conditions of the Permit.

Respectfully submitted,

AQUA ILLINOIS, INC.,

Dated: July 29, 2026

By: /s/ Daniel J. Deeb
One of its Attorneys

Daniel J. Deeb
Alex Garel-Frantzen
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, IL 60606
(312) 258-5500
Dan.Deeb@afslaw.com
Alex.Garel-Frantzen@afslaw.com

Attorneys for Aqua Illinois, Inc.

CERTIFICATE OF SERVICE

I, Alex Garel-Frantzen, certify that on this 29th day of July, 2026, I electronically served a true and correct copy of *Petition for Review of an Illinois Environmental Protection Agency's Special Exception Permit Decision and Motion for Partial Stay* and *Certificate of Service*, together with all exhibits, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

Sara Terranova, Assistant Counsel
Sara.Terranova@illinois.gov
Thomas Saviski, Assistant Counsel
Thomas.Saviski@illinois.gov
Division of Legal Counsel
Illinois Environmental Protection Agency
2520 West Iles Avenue
P.O. Box 19276
Springfield, IL 62794-9276

Don Brown, Clerk of the Board
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, Illinois 60605
Don.Brown@illinois.gov
PCB.Clerks@illinois.gov

My e-mail address is Alex.Garel-Frantzen@afslaw.com.

The number of pages in the e-mail transmission is 12.

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

/s/ Alex Garel-Frantzen
Alex Garel-Frantzen

Dated: July 29, 2026

Daniel J. Deeb
Alex Garel-Frantzen
ARENTFOX SCHIFF LLP
233 South Wacker Drive, Suite 7100
Chicago, Illinois 60606
(312) 258-5521
Dan.Deeb@afslaw.com
Alex.Garel-Frantzen@afslaw.com

Attorneys for Aqua Illinois, Inc.

INDEX OF EXHIBITS

Exhibit A: Special Exception Permit issued by the Illinois Environmental Protection Agency on March 26, 2026, regarding PWS ID 1415050, Aqua Illinois – Woodlawn Monthly Operating Report Special Exception Permit

EXHIBIT A



Illinois Environmental Protection Agency

2520 West Iles Avenue • P.O. Box 19276 • Springfield, Illinois • 62794-9276 • 217-782-3397

JB Pritzker, Governor

James Jennings, Acting Director

Special Exception Permit

March 26, 2026

Michelle Buffenbarger, Northern Area Manager
Aqua Illinois – Woodlawn
4263 Commercial Way
Glenview, IL-60025

RE: **PWS ID 1415050, Aqua Illinois – Woodlawn**
Monthly Operating Report Special Exception Permit

Dear Ms. Buffenbarger:

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") is issuing this Special Exception Permit ("SEP") to the Aqua Illinois - Woodlawn (PWS ID 1415050) Public Water Supply (PWS) requiring the submission of Monthly Operating Reports ("MORs"). 415 ILCS 5/39(a); 35 Ill. Adm. Code 602.600(a).

All reporting requirements for the PWS are established through the Conditions outlined below. **Owners and custodians of the public water supply must comply with all Conditions.** These Conditions supersede any previous MOR SEPs.

The Conditions of this SEP may be appealed to the Illinois Pollution Control Board. 415 ILCS 5/40 (2022) 35 Ill. Adm. Code 602.600(c).

For any questions regarding the MOR SEP, please contact Victor Aguado, Rockford Regional Office at 815-987-7760.

Sincerely,

A handwritten signature in black ink that reads "Jeremy R. Chervinko".

Jeremy Chervinko
Field Operations Section Manager
Division of Public Water Supplies

cc: DPWS/FOS

ec: Thomas Moore, Operator
DPWS/Division File



Special Exception Permit – Conditions
PWS ID 1415050, Aqua Illinois – Woodlawn

The **Aqua Illinois - Woodlawn** Public Water Supply ("PWS") is required to meet the Conditions below. For any questions, please contact the Rockford Field Office at 815-987-7760.

Condition 1. The items listed below must be recorded daily, unless otherwise noted, and included in the MOR.

- a) Facility Name, ID number, Month and Year. 415 ILCS 5/19; 35 Ill. Adm. Code 604.165(a).
- b) Quantity of Raw Water and Quantity of Finished Water used in gallons. At the end of the month the minimum, maximum and average daily water usage is determined and reported. 415 ILCS 5/19; 35 Ill. Adm. Code 604.105(a) and (b).
- c) Quantity (pounds), concentration fed (%) and calculated dosage (mg/L) of each chemical used in the treatment process including sodium hypochlorite, blended phosphate, hydrofluosilicic acid, and other chemicals if changes occur. 415 ILCS 5/19; 35 Ill. Adm. Code 604.105(b) and 604.1105(c).
- d) Finished water test results, in mg/L, for free chlorine. 415 ILCS 5/19; 35 Ill. Adm. Code 604.725(b).
- e) Finished water test results for orthophosphate, fluoride and other parameters as necessary for your treatment objectives. 415 ILCS 5/19; 35 Ill. Adm. Code 604.105(b), 604.900(b) and 604.1150(a).
- f) Result of a chlorine residual test in mg/L for free chlorine taken in the distribution system. The location of these tests must be recorded. 415 ILCS 5/19; 35 Ill. Adm. Code 604.725(b).
- g) Remarks when necessary.

Condition 2. The PWS must submit each MOR as a PDF to the email addresses below or to the address below within 30 days after the last day of each month. Each MOR must be signed and dated by the Responsible Operator in Charge. 415 ILCS 5/19; 35 Ill. Adm. Code 604.165(c).

As a PDF to: Kirk.Bergstrom@Illinois.gov and Tonya.White@Illinois.gov

Or as a printed copy to:

Illinois Environmental Protection Agency
Rockford Regional Office
4302 N Main Street
Rockford, IL 61103

Condition 3. The PWS must submit MORs on forms approved by the Illinois EPA. 415 ILCS 5/19; 35 Ill. Adm. Code 604.165(a). Standard operating report forms are available at: <https://epa.illinois.gov/topics/drinking-water/field-operations/daily-operating-reports.html>