

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. _____
)	(Enforcement – Water)
REID MURDOCH, LLC,)	
d/b/a/ REID MURDOCH CENTER,)	
)	
Respondent.)	

NOTICE OF FILING

To: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 9th day of September 2020, I filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached hereto and are hereby served upon you. You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL
Attorney General of the State of Illinois

By: /s/ Arlene R. Haas
ARLENE R. HAAS
Assistant Attorney General
Environmental Bureau North
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3153
Primary: ahaas@atg.state.il.us
Secondary: mcacaccio@atg.state.il.us

SERVICE LIST

For the Respondent

Thomas D. Lupo
Hinshaw & Culbertson, LLP
151 North Franklin Street, Suite 2500
Chicago, Illinois 60606
TLupo@hinshawlaw.com

CERTIFICATE OF SERVICE

I, ARLENE R. HAAS, an Assistant Attorney General, certify that on the 9th day of September 2020, I caused to be served by electronic mail the foregoing Notice of Filing and Complaint to the person listed on the attached Service List.

/s/ Arlene R. Haas
ARLENE R. HAAS
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3153

3. At all times relevant to the Complaint, Respondent was and is an Illinois limited liability company registered with the Illinois Secretary of State.

4. Respondent's principal office is 350 North Clark Street, Suite 400, Chicago, Illinois 60654.

5. Respondent owns and operates the Reid Murdoch Center ("Facility"), located at 325 North LaSalle Street, Chicago, Cook County, Illinois 60654.

6. The Chicago River runs along the south boundary of the Facility.

7. The Facility uses heating, ventilation, and air conditioning ("HVAC") that contains a cooling water intake/discharge system. The HVAC cooling water intake/discharge system utilizes water from the Chicago River to cool the Facility's air conditioner condensers and results in the release of non-contact cooling water in the form of heated effluent into the Chicago River. The HVAC cooling water intake/discharge system withdraws approximately 1.51 million gallons per day ("MGD") from the Chicago River, and returns approximately the same volume of non-contact cooling water through an outfall designated as "Outfall No. 001." The Facility used 100% of the water withdrawn for cooling purposes.

8. Section 402 of the federal Clean Water Act ("CWA"), 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System ("NPDES") program to address water pollution by regulating point sources that discharge pollutants to the waters of the United States.

9. Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or

so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

10. Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), provides as follows:

No person shall:

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

11. Section 309.102(a) of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

Except as in compliance with the provisions of the Act, Board Regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides the following definition:

“Person” means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

13. Respondent, a limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

14. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

15. The heated effluent discharged from the HVAC cooling water system piping at the Facility is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

16. Section 3.550 of the Act, 415 ILCS 5/3.550 (2018), provides the following definition:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

17. The heated effluent discharged from the HVAC cooling water system piping at the Facility discharges directly into the Chicago River, which constitutes “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2018).

18. In Illinois, the Illinois EPA is the delegated responsible agency for implementation of the NPDES program and federal regulations promulgated thereunder.

19. Section 401.11(d) of the Code of Federal Regulations (“C.F.R.”), 40 C.F.R. 401.11(d), provides as follows:

The term point source means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

20. The outfall associated with the HVAC cooling water intake/discharge system piping at the Facility is a “point source” within the meaning of 40 C.F.R. 401.11(d).

21. Respondent is required to have an NPDES permit for discharges of non-contact cooling water from the HVAC cooling water intake/discharge system piping at the Facility pursuant to Section 12(f) of the Act, 415 ILCS 5/12(f) (2018).

22. On June 20, 2013, Illinois EPA issued to Respondent an NPDES permit for discharges of non-contact cooling water from the HVAC cooling water intake/discharge system at the Facility, NPDES permit No. IL0035491 (“NPDES Permit”) with an effective date of June 20, 2013.

23. Respondent’s NPDES Permit expired on May 31, 2018.

24. Section 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a), provides as follows:

- a) Any permittee who wishes to continue to discharge after the expiration date of the NPDES Permit must timely apply for reissuance of the permit.
 - 1) A permittee has submitted a timely application for a new permit when:
 - A) The permittee submits:
 - i) an application 180 days prior to the expiration date of the existing permit...

25. Standard Condition No. 2 of the NPDES Permit provides as follows:

Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. If the permittee submits a proper application as required by the Agency no later than 180 days prior to the expiration date, this permit shall continue in full force and effect until the final Agency decision on the application has been made.

26. In accordance with Section 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a) and NPDES Permit Standard Condition No. 2, Respondent was required to apply for its NPDES permit renewal by December 2, 2017.

27. Respondent submitted its application to renew its NPDES Permit to Illinois EPA on July 12, 2018.

28. On August 6, 2019, Illinois EPA issued a NPDES Permit to Respondent covering its water intake structures and its discharge of non-contact cooling water into the Chicago River with an effective date of September 1, 2019.

29. By submitting its NPDES Permit application renewal on July 12, 2018, Respondent submitted its application to Illinois EPA 222 days after it was due, (42 days after the expiration date of the existing permit), and thereby failed to timely apply for reissuance of its NPDES Permit, in violation of Section 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a) and NPDES Permit Standard Condition No. 2.

30. By violating 35 Ill. Adm. Code 309.104(a), a regulation adopted by the Board and NPDES Permit Standard Condition 2, Respondent thereby violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

31. By discharging without a permit from June 1, 2018, the day after the NPDES Permit expired, to August 6, 2019, the day the NPDES Permit was reissued, Respondent discharged non-contact cooling water without an NPDES Permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondent, REID MURDOCH, LLC d/b/a REID MURDOCH CENTER, with respect to Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution

Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Standard Condition No. 2;

3. Ordering Respondent to cease and desist from any further violations of Section 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Standard Condition No. 2;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), Sections 309.102(a) and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and NPDES Standard Condition No. 2, and an additional civil penalty of Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018);

6. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as the Board deems appropriate and just.

COUNT II
VIOLATION OF NPDES PERMIT SPECIAL CONDITION NO. 7

1-23. Complainant realleges and incorporates herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

24. Special Condition No. 7 of Respondent's NPDES Permit provides, in pertinent part, as follows:

... [T]he permittee shall prepare and submit information to the Agency outlining current intake structure conditions at this facility, including a detailed description of the current intake structure operation and design, description of any operational or structural modifications from original design parameters, source waterbody flow information, or other information as necessary.

The information shall also include a summary of historical 316(b) related intake impingement and/or entrainment studies, if any, as well as current impingement mortality and/or entrainment characterization data; and shall be submitted to the Agency within six (6) months of the permit's effective date.

25. Pursuant to Special Condition No. 7 of Respondent's NPDES Permit, Respondent was required to prepare and submit to the Illinois EPA intake impingement and/or entrainment studies, as well as current impingement mortality and/or entrainment characterization data, by December 20, 2013.

26. On October 10, 2018, more than four years and nine months late, Respondent, through its consultant V3 Companies, submitted to Illinois EPA the intake impingement and/or entrainment studies, as well as current impingement mortality and/or entrainment characterization data required by NPDES Permit Special Condition No. 7, thereby violating NPDES Permit Special Condition 7.

27. Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), provides, in pertinent part, as follows:

(b) Every holder of an NPDES... permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

28. By failing to timely comply with the reporting requirements set forth in Special Condition No. 7 of the NPDES Permit, Respondent violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), and thereby also violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an Order against Respondent, REID MURDOCH, LLC, d/b/a REID MURDOCH CENTER, with respect to Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein:
2. Finding that Respondent has violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 305.102 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102 and 309.102(a), and NPDES Permit Special Condition No. 7;
3. Ordering the Respondent to cease and desist from any further violations of Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 305.102 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102 and 309.102(a), and NPDES Permit Special Condition No.7;
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and an additional Ten Thousand Dollars (\$10,000) per day that each violation continued to occur;
5. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018);
6. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as this court deems appropriate and just.

COUNT III
VIOLATION OF NPDES PERMIT SPECIAL CONDITION NO. 4

1. Count III is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois on his own motion against Respondent pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018).

2-24. Complainant realleges and incorporates herein paragraphs 2 through 23 of Count I and Paragraph 27 of Count II as paragraphs 2-24 of this Count III.

25. Respondent's NPDES Permit required Respondent to take samples on a periodic basis in compliance with the permit's effluent monitoring requirements.

26. Special Condition No. 4 of Respondent's NPDES Permit provides, in pertinent part, as follows:

The Permittee shall record monitoring results on Discharge Monitoring Report ('DMR') Forms using one such form for each outfall each month.

In the event that an outfall does not discharge during a monthly reporting period, the DMR Form shall be submitted with no discharge indicated.

* * *

The completed Discharge Monitoring Report forms shall be submitted to IEPA no later than the 15th day of the following month . . .

27. NPDES Permit Special Condition No. 4 required Respondent to submit DMRs to Illinois EPA for each month no later than the 15th day of the following month even if no discharge occurred in a given month.

28. Respondent, through its consultant V3 Companies, submitted DMRs to Illinois EPA on October 10, 2018, for the August 2017 through May 2018 monitoring periods, thereby violating NPDES Permit Special Condition No. 4.

29. By failing to timely comply with the reporting requirements set forth in NPDES Permit Special Condition No. 4, Respondent violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), and thereby also violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an Order against Respondent, REID MURDOCH, LLC, d/b/a REID MURDOCH CENTER, with respect to Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein:

2. Finding that Respondent has violated Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f) (2018), Sections 305.102 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102 and 309.102(a), and NPDES Permit Special Condition No. 4;

3. Ordering the Respondent to cease and desist from any further violations of Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and 12(f)(2018), Sections 305.102 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102 and 309.102(a), and NPDES Permit Special Condition No. 4;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and an additional Ten Thousand Dollars (\$10,000) per day that each violation continued to occur;

5. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018);

6. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as this court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: /s/ Elizabeth Wallace
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
ARLENE R. HAAS
Assistant Attorneys General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3153
primary e-mail: ahaas@atg.state.il.us
secondary email: mcacaccio@atg.state.il.us