

**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. 21-18
	)	(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 28th day of October 2020, I filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Motion to Request Relief from Hearing Requirement and Stipulation and Proposal for Settlement, copies of which are attached hereto and are hereby served upon you.

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  
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**SERVICE LIST**

For the Respondent

Thomas D. Lupo  
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Illinois Pollution for Control Board

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
Email: Brad.Halloran@illinois.gov

**CERTIFICATE OF SERVICE**

I, ARLENE R. HAAS, an Assistant Attorney General, certify that on the 28th day of October 2020, I caused to be served by electronic mail the foregoing Notice of Filing, Motion to Request Relief from Hearing Requirement, and Stipulation and Proposal for Settlement to the persons 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



Settlement filed along with this Motion.

6. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2018).

Respectfully submitted,

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

BY: /s/ Arlene R. Haas  
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DATE: October 28, 2020



**I. STATEMENT OF FACTS**

**A. Parties**

1. On September 9, 2020, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2018), against the Respondent (the “Complaint”).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2018).

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

4. Respondent’s principal office is 350 North Clark Street, Suite 400, Chicago, Illinois 606054.

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

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

7. The Facility uses air conditioning (“HVAC”) that utilizes a water intake/discharge system. The HVAC 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 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. 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.

9. The NPDES Permit included requirements regarding, among others, the submission of (i) a permit renewal application, (ii) intake impingement and/or entrainment studies, as well as current impingement mortality and entrainment characterization data, and (iii) Discharge Monitoring Reports (“DMRs”).

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

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent violated the following provisions of the Act and Board regulations:

Count I: Failure to Comply with NPDES Permit Renewal Requirements in violation of Sections 12(a) and 12(f) of the Illinois Environmental Protection 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 Permit Standard Condition No. 2.

Count II: Violation of NPDES Permit Special Condition No. 7 in violation of Sections 12(a) and 12(f) of the Illinois Environmental Protection Act, 415 ILCS 5/12(a) and 12(f) (2018), Section 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), and NPDES Permit Special Condition No. 7.

Count III: Violation of NPDES Permit Special Condition No. 4 in violation of Sections 12(a) and 12(f) of the Illinois Environmental Protection Act, 415 ILCS 5/12(a) and 12(f) (2018), Section 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35. Ill. Adm. Code 305.102(b) and 309.102(a), and NPDES Permit Special Condition No. 4.



**C. Non-Admission of Violations**

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

**D. Compliance Activities to Date**

1. On July 12, 2018, the Respondent submitted its application to renew its NPDES Permit to Illinois EPA. Respondent's NPDES Permit was ultimately renewed by Illinois EPA on August 6, 2019.

2. On October 10, 2018, the Respondent submitted to Illinois EPA the intake impingement and/or entrainment studies, as well as current impingement mortality and entrainment characterization data required by NPDES Permit Special Condition No. 7.

3. On October 10, 2018, the Respondent submitted the DMRs to Illinois EPA for the August 2017 through May 2018 monitoring periods required by NPDES Permit Special Condition No. 4. Respondent contends it previously made a good faith effort to upload its monthly DMRs.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations

alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2018).

**III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Complainant alleges that the Respondent's failure to timely submit its application to renew its NPDES Permit resulted in the Respondent discharging wastewater from its Facility to the Chicago River without an NPDES permit authorizing such discharge from June 1, 2018 to August 6, 2019. As a result, Complainant alleges that Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations and potentially threatened human health and the environment.

2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located.

4. The Respondent's NPDES Permit requirements to timely submit the (a) NPDES Permit renewal application, (b) intake impingement and/or entrainment studies, (c) current impingement mortality and/or entrainment characterization data and (d) DMRs, were technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Complainant alleges that the Respondent failed to timely submit its NPDES Permit renewal application by submitting it on July 12, 2018, 222 days after it was due. Complainant also alleges that Respondent failed to timely submit the intake impingement and/or entrainment studies and current impingement mortality and/or entrainment characterization data pursuant to NPDES Permit Special Condition No. 7 by submitting them October 10, 2018, more than four years and nine months late. In addition, Complainant alleges that Respondent failed to timely submit the DMRs for August 2017 through May 2018 in accordance with NPDES Permit Special Condition No. 4 by submitting them on October 10, 2018, rather than on the 15<sup>th</sup> day of the following month for each monthly reporting period. The Illinois EPA's information gathering responsibilities were hindered.
2. The Respondent was diligent in attempting to come back into compliance with the Act and the Board regulations, once Illinois EPA notified the Respondent of its noncompliance.
3. The Respondent gained de minimis economic benefit as a result of its failure to timely submit its NPDES Permit renewal application and the required studies, data, and DMRs.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$10,000 will serve to deter further violations and aid in future voluntary compliance with the Act and the Board regulations.
5. To Complainant's knowledge, the Respondent has no previously adjudicated violations of the Act.
6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.
8. A Compliance Commitment Agreement was not at issue in this matter.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

The Respondent shall pay a civil penalty in the sum of ten thousand dollars (\$10,000) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. Respondent shall comply with all the terms and conditions of its reissued NPDES Permit.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Respondent's Facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

3. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

4. The Respondent shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the ten thousand dollars (\$10,000) penalty, its commitment to cease and desist as contained in Section V.D.4 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act, the Board regulations and NPDES Permit conditions that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on September 9, 2020. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

**F. Opportunity for Public Comment**

Pursuant to 35 Ill. Adm. Code 103.300(b)(2), the Board shall publish notice of this Stipulation for at least 30 days prior to the Board accepting the Stipulation. If public comments are submitted to the Board regarding this Stipulation, the Complainant reserves the right to withdraw its consent if the comments regarding the Stipulation disclose facts or considerations which indicate that the Stipulation is inappropriate, improper, or inadequate. Respondent consents to the entry of this Stipulation without further notice and agrees not to withdraw from or oppose acceptance of this Stipulation or to challenge any provision of the Stipulation, unless the Complainant has notified Respondent in writing that it withdraws or withholds its consent for the Stipulation. In the event the Complainant notifies the Respondent that it withdraws or withholds its consent for the Stipulation, then the terms of the agreement may not be used as evidence in any litigation between those entities.

**G. Enforcement of Stipulation**

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**H. Execution of Stipulation**

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it. This Stipulation may be executed by the parties in one

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or more counterparts, all of which taken together shall constitute one and the same instrument.


WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS      ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

KWAME RAOUL  
Attorney General  
State of Illinois

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

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: 10/26/20

DATE: 10/23/2020

REID MURDOCH LLC,  
d/b/a REID MURDOCH CENTER

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

