

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 by LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 401 NORTH WABASH VENTURE, LLC, )  
 a Delaware limited liability company, )  
 )  
 Respondent. )

No.

**NOTICE OF FILING**

TO: Prentice Hall Corporation  
 Registered Agent for 401 North Wabash Venture, LLC  
 801 Adlai Stevenson Drive  
 Springfield, Illinois 62703

John F. Shonkwiler  
 Attorney for 401 North Wabash Venture, LLC  
 Novack and Macey LLP  
 100 North Riverside Plaza  
 Chicago, Illinois 60606

Chad M. Kruse  
 Assistant Counsel  
 Illinois Environmental Protection Agency  
 1021 North Grand Avenue East  
 Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "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

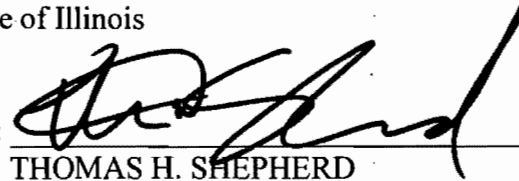
if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



THOMAS H. SHEPHERD  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Fl.  
Chicago, IL 60602  
(312) 814-5361

DATE: December 18, 2012

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
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Complainant,	)	
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v.	)	No.
	)	
401 NORTH WABASH VENTURE, LLC,	)	
a Delaware limited liability company,	)	
	)	
Respondent.	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, 401 NORTH WABASH VENTURE, LLC, as follows:

**COUNT I**

**WATER POLLUTION**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), against Respondent 401 NORTH WABASH VENTURE, LLC ("Respondent"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

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 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent was and is a Delaware limited liability company duly authorized to do business in Illinois.

4. At all times relevant to this Complaint, Respondent was and is the owner of the property located at 401 North Wabash Avenue, Chicago, Cook County, Illinois ("Site"). The Site includes a heating, ventilation and air conditioning ("HVAC") system that contains a cooling water system. The Site is commonly known as Trump Tower.

5. The Chicago River runs along the south boundary of the Site.

6. On July 12, 2011, the Illinois EPA inspected the Site. At this time, thermal process wastewater from the Site's HVAC cooling water system was discharging directly into the Chicago River from piping at the Site's southwest embankment on the river.

7. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment of 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.

8. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

9. Respondent, a limited liability company, is a "person" as that term is defined in Section 3.315 of the Act.

10. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

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

11. The thermal process wastewater discharged from the HVAC cooling water system piping at the Site is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

12. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), provides the following definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

13. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), 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.

14. The thermal process wastewater discharged from the HVAC cooling water system piping at the Site discharged directly into the Chicago River.

15. The Chicago River constitutes “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

16. On September 7, 2012, the Illinois EPA issued to Respondent a National Pollutant Discharge Elimination System (“NPDES”) permit numbered IL0079812 authorizing the discharge of the thermal process wastewater from the HVAC cooling water system at the Site into the Chicago River.

17. From at least July 12, 2011, through September 7, 2012, on dates better known to Respondent, Respondent caused, threatened, or allowed the discharge of thermal process wastewater from the HVAC cooling water system piping into the Chicago River.

18. The discharge of thermal process wastewater from the HVAC cooling water system piping into the Chicago River has caused or tended to cause water pollution, in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life, and have likely created a nuisance.

19. By causing or allowing the discharge of contaminants in such a manner as to cause or tend to cause water pollution, Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondent 401 NORTH WABASH VENTURE, LLC, on this Count I:

1. Authorizing a hearing in this matter at which Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(a) of the Act;
3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

**COUNT II**

**DISCHARGE OF CONTAMINANTS WITHOUT A NPDES PERMIT**

1- 15. Complainant realleges and incorporates by reference herein paragraphs 1 through 6, 8 through 11, and 13 through 17 of Count I as paragraphs 1 through 15 of this Count IV.

16. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), 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, any 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 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.

17. 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.

18. The HVAC cooling water system piping is a “point source,” within the meaning of 40 C.F.R. 401.11(d).

19. From at least July 12, 2011, through the date of filing this Complaint, on dates better known by Respondent, Respondent caused or allowed the discharge of thermal process

wastewater from the HVAC cooling water system piping at the Site into the Chicago River, and thereby Respondent caused or allowed the discharge of a contaminant from a point source into the waters of the State.

20. At no time prior to September 7, 2012, had the Illinois EPA issued a NPDES permit authorizing thermal process wastewater discharges from the HVAC cooling water system piping into the Chicago River.

21. By causing or allowing the discharge of a contaminant from a point source into the waters of the State without a NPDES permit, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondent 401 NORTH WABASH VENTURE, LLC, on this Count II:

1. Authorizing a hearing in this matter at which Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(f) of the Act;
3. Ordering Respondent to cease and desist from any further violations of Section 12(f) of the Act;
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) against Respondent for each day of violation of Section 12(f) of the Act;
5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.



PEOPLE OF THE STATE OF ILLINOIS,

by LISA MADIGAN,  
Attorney General of the State of Illinois

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



ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

THOMAS H. SHEPHERD  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-5361

**CERTIFICATE OF SERVICE**

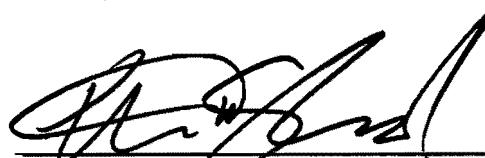
I, THOMAS H. SHEPHERD, an Assistant Attorney General, do certify that I caused to be served on this 18th day of December 2012, the foregoing Notice of Filing, Complaint, and a Certificate of Service, by U.S. Certified Mail (return receipt requested), upon the following persons:

Prentice Hall Corporation  
Registered Agent for 401 North Wabash Venture, LLC  
801 Adlai Stevenson Drive  
Springfield, Illinois 62703

John F. Shonkwiler  
Attorney for 401 North Wabash Venture, LLC  
Novack and Macey LLP  
100 North Riverside Plaza  
Chicago, Illinois 60606

Chad M. Kruse  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62794-9276

by depositing true and correct copies of same in an envelope, certified mail postage prepaid, with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601, at of before the hour of 5:00 p.m.

  
\_\_\_\_\_  
THOMAS H. SHEPHERD