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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State Illinois,)
)
Plaintiff,)
)
v.)
)
401 NORTH WABASH VENTURE, LLC,)
d/b/a TRUMP INTERNATIONAL)
HOTEL & TOWER, a Delaware)
limited liability company.)
Defendant.)

No. 18 CH 10229

**SECOND AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney
General of the State of Illinois, on his own motion and at the request of the ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY, complains of Defendant 401 NORTH
WABASH VENTURE, LLC, a Delaware limited liability company, doing business as TRUMP
INTERNATIONAL HOTEL & TOWER, as follows:

**COUNT I
DISCHARGE WITHOUT A NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM PERMIT**

1. This Count is brought on behalf of THE PEOPLE OF THE STATE OF
ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, on his own
motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”)
against Defendant, 401 NORTH WABASH VENTURE, LLC, a Delaware limited liability
company, d/b/a TRUMP INTERNATIONAL HOTEL & TOWER, pursuant to the terms and

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provisions of Section 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d) and (e) (2022).

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 (2022), and charged, *inter alia*, with the duty of administering environmental permit programs and enforcement of the Act.

3. 401 North Wabash Venture, LLC ("Defendant") is a Delaware limited liability company duly authorized to transact business in Illinois. Pursuant to Illinois Secretary of State records, the manager of Defendant is 401 Mezz Venture LLC, also a Delaware limited liability company and authorized to do business in Illinois, and is located at 725 5th Avenue, 26th Floor, New York, NY 10022.

4. Defendant owns and operates Trump International Hotel & Tower ("Facility"), located at 401 N. Wabash Avenue, Chicago, Cook County, Illinois.

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

6. Defendant's Facility includes a heating, ventilation, and air conditioning ("HVAC") system that contains a cooling water intake/discharge system ("CWIS"). The system results in the release of thermal process wastewater in the form of heated effluent into the Chicago River. The Facility's CWIS is designed to withdraw up to 21.6 million gallons per day ("MGD") from the Chicago River as cooling water, and return approximately the same volume it withdraws in the form of heated effluent through an outfall designated as "Outfall No. 001". One hundred percent of all water withdrawn by the Facility is used for cooling purposes.

7. 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 waters.

8. Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), 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.

9. 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.

10. Section 3.315 of the Act, 415 ILCS 5/3.315 (2022), 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.

11. Defendant, a limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2022).

12. Section 3.165 of the Act, 415 ILCS 5/3.165 (2022), provides the following definition:

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

13. The heated effluent discharged from the CWIS at the Facility is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2022).

14. Section 3.550 of the Act, 415 ILCS 5/3.550 (2022), 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.

15. The heated effluent discharged from the CWIS at the Facility discharges directly into the Chicago River.

16. The Chicago River constitutes “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2022).

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

18. 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.

19. The CWIS at the Facility is a “point source” within the meaning of 40 C.F.R. § 401.11(d).

20. Defendant is required to have an NPDES permit for discharges of heated effluent from the CWIS at the Facility pursuant to Section 12(f) of the Act, 415 ILCS 5/12(f) (2022).

21. On January 10, 2012, Defendant submitted to Illinois EPA an NPDES permit application.

22. On September 12, 2012, Illinois EPA issued to Defendant an NPDES permit for discharges of heated effluent from the CWIS at the Facility.

23. On October 16, 2012, Defendant submitted to Illinois EPA an application to modify the terms of its NPDES permit due to the fact that Defendant submitted an incorrect discharge flow in its initial permit application.

24. On March 15, 2013, Illinois EPA issued to Defendant its most recent NPDES permit, No. IL0079812 (“NPDES Permit”).

25. Defendant’s NPDES Permit expired on August 31, 2017.

26. Defendant submitted its application to renew its NPDES Permit on May 26, 2017.

27. As of the date of filing this Second Amended Complaint, the Illinois EPA has not issued a new or renewed NPDES Permit to Defendant covering its CWIS or its discharge of heated effluent into the Chicago River.

28. Defendant has continued operating its water intake structures at the Facility and has continued discharging heated effluent through Outfall No. 001 into the Chicago River since its NPDES Permit expired on August 31, 2017.

29. 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...

30. Standard Condition 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.

31. Defendant submitted its application to renew its NPDES Permit 82 days after it was due, (98 days prior to expiration date of the existing permit) and thereby failed to timely apply for reissuance of its NPDES Permit, in violation of 35 Ill. Adm. Code 309.104(a) and Standard Condition 2 of the NPDES Permit.

32. By continuing to operate the water intake structures and discharging heated effluent into the Chicago River without an NPDES Permit from at least September 1, 2017 through the date of filing this Second Amended Complaint, Defendant thereby operated and continues to operate the Facility without an NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

33. By violating 35 Ill. Adm. Code 309.104(a), a regulation adopted by the Board, and Standard Condition 2 of the NPDES Permit, Defendant thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

34. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of

Plaintiff, and against Defendant, 401 NORTH WABASH VENTURE, LLC, d/b/a TRUMP INTERNATIONAL HOTEL & TOWER:

A. Finding that Defendant has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and 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);

B. Ordering Defendant to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and 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);

C. Ordering Defendant to immediately take the necessary actions that will result in a final and permanent abatement of the violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and 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);

D. Assessing against Defendant 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) (2022), and Sections 309.102(a) and 309.104 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

E. Taxing all costs in this action, including attorney, expert witness, and consultant fees, against Defendant; and

F. Granting such other relief as this court deems appropriate and just.

COUNT II
FAILURE TO COMPLY WITH NPDES REGULATIONS APPLICABLE TO COOLING
WATER INTAKE STRUCTURES FOR NEW FACILITIES

1-24. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count II.

25. Defendant is required to comply with numerous provisions of the CWA as applicable to the Facility and as required by Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

26. Regulations implementing NPDES permit applications are codified at 40 C.F.R. Part 122 (“Federal Permit Regulations”).

27. Section 122.2 of the Federal Permit Regulations, 40 C.F.R. § 122.2, provides the following definitions:

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. . . . When there is an approved State program, “Director” normally means the State Director....

* * *

State Director means the chief administrative officer of any State or interstate agency operating an “approved program,” or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, “State Director” means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

28. The Director of the Illinois EPA, or his authorized and delegated representative, is the “Director” and “State Director” as defined by Section 122.2 of the Federal Permit Regulations, 40 C.F.R. § 122.2, as the Illinois EPA operates an “approved program” under the CWA.

29. Section 122.2 of the Federal Permit Regulations, 40 C.F.R. § 122.2, provides the following definition of “new source”:

New source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

30. Sections 122.29(b)(1), (2), and (4) of the Federal Permit Regulations, 40 C.F.R. § 122.29(b)(1), (2), and (4) provide as follows:

(b) *Criteria for new source determination.*

- (1) Except as otherwise provided in an applicable new source performance standard, a source is a “new source” if it meets the definition of “new source” in § 122.2, and
 - (i) It is constructed at a site at which no other source is located; or
 - (ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.
- (2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

* * *

- (4) Construction of a new source as defined under § 122.2 has commenced if the owner or operator has:
 - (i) Begun, or caused to begin as part of a continuous on-site construction program:
 - (A) Any placement, assembly, or installation of facilities or equipment; or
 - (B) Significant site preparation work including clearing, excavation or removal of existing buildings,

structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

- (ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

31. Regulations implementing the NPDES Requirements Applicable to Cooling Water Intake Structures for New Facilities under Section 316(b) of the CWA are codified at 40 C.F.R. Part 125, Subpart I (“Subpart I”).

32. Defendant’s Facility is a building from which there is or may be a discharge of pollutants and the construction of the Facility commenced on or about March 17, 2005, which is after January 17, 2002, the effective date of Subpart I.

33. Defendant’s Facility’s CWIS includes two cooling water intake chambers, two traveling water screens, and two vertical turbine pumps which withdraw water from the Chicago River. The intake chambers deliver cooling water to two river intake wells which each contain a through-flow traveling screen perpendicular to the water flow to filter debris before delivering the cooling water to four electric centrifugal chillers using two vertical turbine pumps located behind the traveling screens.

34. Defendant constructed the 92-story Facility after demolishing the six-story Sun-Times building, therefore the Facility was constructed at a site at which no other source was located. The Facility is therefore a “new source” as that term is defined in 40 C.F.R. §§ 122.2(a) and 122.29(b)(i).

35. In the alternative, Defendant entirely replaced process and production equipment from the former Sun-Times building with a newly designed HVAC and CWIS system when it

constructed the Facility. The Facility is therefore a “new source” as that term is defined in 40 C.F.R. §§ 122.2(a) and 122.29(b)(ii).

36. Section 316(b) of the CWA, 33 U.S.C. § 1326(b), provides as follows:

Cooling water intake structures: Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

37. Section 125.81(a) of Subpart I, 40 C.F.R. § 125.81(a), provides as follows:

(a) This subpart applies to a new facility if it:

- (1) Is a point source that uses or proposes to use a cooling water intake structure;
- (2) Has at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes as specified in paragraph (c) of this section; and
- (3) Has a design intake flow greater than two (2) million gallons per day (MGD).

38. Section 125.83 of Subpart I, 40 C.F.R. § 125.83, provides the following definitions:

Cooling water means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes in § 125.81(c).

* * *

Cooling water intake structure means the total physical structure and any associated constructed waterways used to withdraw cooling water from waters of the U.S. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

Design intake flow means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

Entrainment means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

Freshwater river or stream means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this rule, a flow-through reservoir with a retention time of 7 days or less will be considered a freshwater river or stream.

Impingement means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

New facility means any building, structure, facility, or installation that meets the definition of a “new source” or “new discharger” in 40 CFR 122.2 and 122.29(b)(1), (2), and (4) and is a greenfield or stand-alone facility; commences construction after January 17, 2002; and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. New facilities include only “greenfield” and “stand-alone” facilities. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility (see 40 CFR 122.29(b)(1)(i) and (ii)). A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site (see 40 CFR 122.29(b)(1)(iii)).

(1) Examples of “new facilities” include, but are not limited to: the following scenarios:

* * *

(ii) A facility is demolished and another facility is constructed in its place. The newly-constructed facility uses the original facility's cooling water intake structure, but modifies it to increase the design capacity to accommodate the intake of additional cooling water.

39. On September 20, 2002, the Defendant submitted Preconstruction Notification through its agent OLKO Engineering to the Illinois EPA, U.S. Army Corps of Engineers, and Illinois Department of Natural Resources and for construction of a bulkhead along the Chicago River for the Trump Tower Chicago. The notification included the project description of the cooling water intake/outfalls for the new construction as follows:

The existing building will be demolished/removed and in its place will be constructed the TRUMP TOWER – CHICAGO....

* * *

The existing Chicago Sun-Times Building has a cooling water intake/outlet connected to the river, operating under [NPDES Permit] No. ILG250110. It is intended to install a similar, but larger cooling water system, for the new Trump Tower...The Tower cooling system has not yet been designed in detail but, two 48 inch diameter intake/outlet systems are assumed, which would mean 4 penetrations through the existing and new bulkheads....

40. On January 16, 2004, U.S. Army Corps of Engineers and Illinois EPA issued a Joint Public Notice regarding the permit application which included the project description including the following:

“The existing building will be demolished/removed an in its place the Trump Tower Chicago will be constructed.

* * *

The existing bulkhead will be pierced at 4 locations to accommodate 2 cooling water intakes plus 2 discharge outlets – through the existing sheet pile bulkhead. Each of the 4 openings will be 48 inches in diameter located below the waterline. Each of the openings will be reinforced with an underwater steel frame welded to the steel bulkhead....

41. On August 25, 2004, the U.S. Army Corps of Engineers issued a Regional Permit Program Pre-Construction Notice regarding the Facility, which included Defendant’s July 30, 2004, application for cooling water intakes and outflows for the Facility prepared by OLKO Engineering. The Project Description for the Facility includes:

The existing steel sheet pile bulkhead will be pierced at 4 locations, to accommodate 2 cooling water intakes, plus discharge outflow openings for the air conditioning system of the new building.

Two cooling water intakes/outflows already exist, serving the existing 6 story building. *They will be enlarged for the additional cooling water required for the new larger building....*

* * *

Each of the 4 openings will be 4'-6'' square, leading to reinforced concrete chambers 4'-6'' wide and 6'6'' high. The chambers will run perpendicular to the bulkhead, extending back and connecting into the new building cooling water system....

(emphasis added).

42. On November 29, 2004, the Illinois EPA received notice that the US. Army Corps of Engineers authorized the proposed construction of cooling water intakes and outfalls at the Facility on October 29, 2004.

43. On February 25, 2005, Defendant's consultant OLKO Engineering, requested a modification to the previously granted U.S. Army Corps of Engineers permit. This modification proposed shifting one of the openings of the intake/outflow locations and changing the functioning of the new openings by switching the intake and outflow locations. On June 2, 2005, U.S. Army Corps of Engineers stated it had no objection to this proposed modification.

44. On November 30, 2017, Defendant submitted to the Illinois EPA information related to Special Condition 8 of the NPDES Permit which described the current intake structure conditions at the facility as follows:

The 92 story Trump International Hotel & Tower Chicago (the Site) is located at 401 North Wabash Avenue....

The site was previously occupied by the six (6) story high Chicago Sun-Times building, which extended down, with basement levels, below the adjacent north back of the Chicago River.

According to Site intake design criteria (Reference: OLKO Engineering, Feb. 25, 2005), the facility has two 36” intake lines which draw non-contact cooling water from the Chicago River. The new intake is located approximately 180 ft. east of the N. Wabash Avenue Bridge (the bridge). The existing intake is located approximately 300 ft. east of the Bridge. ***One intake was constructed during the hotel project (the new intake), and one intake was existing, from the Chicago Sun Times building.*** Openings in the 502-ft long sheet pile bulkhead were made to accommodate the intake lines. The openings are located several feet below normal water surface elevation. The river is about 19 to 20 feet deep at this location.

(emphasis added).

45. Defendant constructed the Facility after demolishing the former Sun-Times building, and therefore constructed the Facility at a site at which no other source was located. Therefore, the Facility is a greenfield as defined by Section 125.83 of Subpart I, 40 C.F.R. § 125.83 and 40 C.F.R. § 122.29(b)(i).

46. In the alternative, in constructing the Facility, Defendant totally replaced the Sun-Times building and HVAC system, and therefore totally replaced the process or production equipment of that facility. Therefore, the Facility is a greenfield as defined by Section 125.83 of Subpart I, 40 C.F.R. § 125.83 and 40 C.F.R. § 122.29(b)(ii).

47. After January 17, 2002, Defendant increased the capacity of the existing CWIS at the Facility by constructing a new intake and discharge opening, and enlarging the pre-existing intake and discharge openings to accommodate the intake of additional cooling water. The Facility is therefore a “new facility” as that term is defined by Section 125.83 of Subpart I, 40 C.F.R. § 125.83.

48. The CWIS at the Facility is a point source that uses a cooling water intake structure with a design intake greater than 2 MGD and uses 100% of the water it withdraws for cooling purposes and is therefore subject to the requirements of Subpart I of the CWA Regulations.

49. Section 125.84 of Subpart I, 40 C.F.R. § 125.84, provides, in relevant part, as follows:

- (a) (1) The owner or operator of a new facility must comply with either:
 - (i) Track I in paragraph (b) or (c) of this section; or
 - (ii) Track II in paragraph (d) of this section.

* * *

- (b) Track I requirements for new facilities that withdraw equal to or greater than 10 MGD. You must comply with all of the following requirements.

* * *

- (6) You must submit the application information required in 40 C.F.R. 122.21(r) and § 125.86(b).

* * *

- (d) Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

* * *

- (3) You must submit the application information required in 40 C.F.R. § 122.21(r) and § 125.86(c).

50. Section 122.21(c)(1) of the Federal Permit Regulations, 40 C.F.R. § 122.21(c)(1) provides, in pertinent part, that:

Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director.

51. At no point did Defendant request permission to submit an application for a new discharge on a date later than required by Section 122.21(c)(1) of the Federal Permit Regulations, 40 C.F.R. § 122.21(c)(1). At no point did the Illinois EPA grant Defendant

permission to submit an application for a new discharge on a date later than required by Section 122.21(c)(1) of the Federal Permit Regulations, 40 C.F.R. § 122.21(c)(1).

52. Section 122.21(r) of the Federal Permit Regulations, 40 C.F.R. § 122.21(r), provides specified permit application requirements for facilities with cooling water intake structures. In particular, permit application requirements for new facilities with cooling water intake structures include the following:

- 122.21(r)(2) – Source water physical data
- 122.21(r)(3) – Cooling water intake structure data
- 122.21(r)(4) – Source water baseline biological characterization data

53. The Facility, which withdraws up to 21.6 MGD, is required to comply with Track I or Track II as prescribed by Section 125.84(b) and (d) of Subpart I, 40 C.F.R. § 125.84(b) and (d).

54. Track I compliance under Section 125.84(b) of Subpart I, 40 C.F.R. § 125.84(b) requires, among other things, that:

- (1) [Applicant] must reduce your intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;
- (2) You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s;
- (3) You must design and construct your cooling water intake structure such that the total design intake flow from all cooling water intake structures at your facility meets the following requirements:
 - (i) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five (5) percent of the source water annual mean flow;

* * *

- (6) [Applicant] must submit the application information required in 40 CFR 122.21(r) and § 125.86(b);
- (7) [Applicant] must implement the monitoring requirements specified in § 125.87;

- (8) [Applicant] must implement the record-keeping requirements specified in § 125.88.

55. Track II compliance under Section 125.84(d) of Subpart I, 40 C.F.R. § 125.84(d), requires, among other things, that:

- (1) [Applicant] must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a level comparable to that which you would achieve were you to implement the requirements of paragraphs (b)(1) and (2) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if you were to implement the requirements of paragraphs (b)(1) and (2) of this section. The Director will consider information provided by any fishery management agency and may also consider data and information from other sources.
- (2) [Applicant] must design and construct your cooling water intake structure such that the total design intake flow from all cooling water intake structures at your facility meet the following requirements:
 - (i) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than five (5) percent of the source water annual mean flow;

* * *

- (3) [Applicant] must submit the application information required in 40 CFR 122.21(r) and § 125.86(c).
- (4) [Applicant] must implement the monitoring requirements specified in § 125.87.
- (5) [Applicant] must implement the record-keeping requirements specified in § 125.88.

56. Both Track I and Track II compliance under Sections 125.84(b)(3)(i) and (d)(2)(i) of Subpart I, 40 C.F.R. §§ 125.84(b)(3)(i) and (d)(2)(i), require that design intake flow be no greater than five percent of the source water annual mean flow for cooling water intake structures located in a freshwater river.

57. Both Track I and Track II compliance under Sections 125.84(b) and (d) of Subpart I, 40 C.F.R. § 125.84(b) and (d), require compliance with Section 125.86 when applying for a new or reissued NPDES permit for a cooling water intake structure located in a freshwater river or stream. Section 125.86 requires the applicant to provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements. 40 C.F.R. § 125.86(b)(3)(i) and (c)(1)(i).

58. The Chicago River is freshwater river as defined in 40 C.F.R. § 125.83, as it is a lotic system that neither receives significant inflows of water from oceans or bays due to tidal action and is not a flow through reservoir.

59. Between 1997 and 2005, the mean annual flow of the Main Branch of the Chicago River was 197 cubic feet per second (“cfs”) based on the data from the Columbus Drive United States Geological Service gaging station. On February 28, 2019, Defendant submitted to the Illinois EPA a document titled “§ 316(b) 40 C.F.R. § 122.21(r) and 125.86(c) Information for 401 North Wabash” wherein Defendant reported that the annual mean flow of the Main Branch of the Chicago River from 1996 to 2006 was 196 cfs.

60. Defendant disclosed in its Illinois EPA permit submittals that design intake flow for the Facility is 21.6 MGD (33.42 cfs) and average mean flow between 2016 and 2019 was 7.3 MGD (11.29 cfs), which are 16.96 and 5.73 percent of 197 cfs, the mean annual flow of the Chicago River, respectively.

61. As Defendant’s design intake flow is greater than five percent of the Chicago River’s mean annual flow, Defendant cannot demonstrate compliance with Sections 125.84(b)(3)(i) and (d)(2)(i) of Subpart I, 40 C.F.R. §§ 125.84(b)(3)(i) and (d)(2)(i), as the system is currently configured.

62. Beginning 180 days prior to Defendant's commencement of discharge from the Facility in 2008, a date best known to Defendant, and continuing until the filing of this Second Amended Complaint, Defendant failed to comply with the CWA Section 316(b) New Facility permitting requirements in Section 122.21(r) of the Federal Permit Regulations, 40 C.F.R. § 122.21(r) and the Track I or Track II requirements of Sections 125.84 and 125.86 of Subpart I, 40 C.F.R. §§ 125.84 and 125.86, including four times when Defendant submitted inaccurate permit application documents to the Illinois EPA, to wit:

- i) at the time that Defendant submitted its initial permit application to Illinois EPA on January 10, 2012;
- ii) at the time that Defendant submitted its request to modify its permit on October 16, 2012; and
- iii) at the time that Defendant submitted its renewal permit application on May 26, 2017.
- iv) at the time that Defendant submitted its Section 125.84(d) of Subpart I, 40 C.F.R. 125.84(d), Comprehensive Demonstration Study ("CDS") on January 1, 2020.

63. By failing to comply with the CWA Section 316(b) requirements in Section 122.21(r) of the Federal Permit Regulations, 40 C.F.R. § 122.21(r) and the Track I or Track II requirements of Sections 125.84 and 125.86 of Subpart I, 40 C.F.R. §§ 125.84 and 125.86, Defendant failed to minimize harm to fish and other aquatic organisms, in violation of Section 306.201 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201.

64. By failing to meet the requirements of CWA Section 316(b) in Section 122.21(r) of the Federal Permit Regulations, 40 C.F.R. § 122.21(r) and the Track I or Track II

requirements of Sections 125.84 and 125.86 of Subpart I, 40 C.F.R. §§ 125.84 and 125.86 Defendant discharged heated effluent into the Chicago River in violation of the CWA, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

65. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff, and against Defendant, 401 NORTH WABASH VENTURE, LLC, d/b/a TRUMP INTERNATIONAL HOTEL & TOWER:

A. Finding that Defendant has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Sections, 306.201 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201 and 309.102(a);

B. Ordering Defendant to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Sections, 306.201 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201 and 309.102(a);

C. Ordering Defendant to immediately take the necessary actions that will result in a final and permanent abatement of the violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Sections, 306.201 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201 and 309.102(a);

D. Assessing against Defendant 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) (2022), and

Sections, 306.201 and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201 and 309.102(a);

E. Taxing all costs in this action, including attorney, expert witness, and consultant fees, against Defendant; and

F. Granting such other relief as this court deems appropriate and just.

COUNT III
VIOLATION OF NPDES PERMIT CONDITIONS

1-24. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count III.

25. Special Condition 8 of Defendant's NPDES Permit provides, in relevant 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 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.

26. Defendant's NPDES permit became effective on March 15, 2013. Therefore, pursuant to Special Condition 8 of the NPDES Permit, Defendant was required to prepare and submit to the Illinois EPA source waterbody flow information, intake impingement and/or entrainment studies as well as current impingement mortality and/or entrainment characterization data on or about September 15, 2013.

27. Defendant failed to prepare or submit source waterbody flow information, information relating to intake impingement and/or entrainment studies, or current impingement

mortality and/or entrainment characterization data as required by Special Condition 8 of Defendant's NPDES Permit within six months of the permit's effective date.

28. On May 26, 2017, Illinois EPA received an NPDES renewal application from Defendant which did not contain any information required by Special Condition 8 of the NPDES Permit.

29. On November 30, 2017, Defendant submitted to the Illinois EPA information regarding the design criteria for the intake structures and cooling system and a sequence of operation description. The information submitted on November 30, 2017 did not include source waterbody flow information, historical intake impingement, and/or entrainment studies or current impingement mortality and/or entrainment characterization data as required by Special Condition 8.

30. By violating Special Condition 8 of the NPDES Permit, Defendant discharged heated effluent into the Chicago River in violation of the NPDES Permit, thereby violating Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

31. Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), provides, in relevant 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.

32. By failing to comply with reporting requirements set forth in Special Condition 8 of the NPDES Permit, Defendant violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b).

33. Section 306.201 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201, provides as follows:

New water intake structures on waters designed for general use, whose construction begins after the effective date of this Chapter, shall be so designed as to minimize harm to fish and to other aquatic organisms.

34. The Chicago River is required to meet the Board's water quality standards for general use pursuant to Sections 303.201 and 303.204 of the Board's Water Quality Regulations, 35 Ill. Adm. Code 303.201 and 303.204.

35. By failing to comply with requirements set forth in Special Condition 8 of the NPDES Permit, Defendant failed to minimize harm to fish and other aquatic organisms, in violation of Section 306.201 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.201.

36. Standard Condition 27 of the NPDES Permit provides, in relevant part, as follows:

The permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 Ill. Adm. Code, Subtitle C...

37. By failing to comply with Section 306.201 of the Board Water Quality Standards, 35 Ill. Adm. Code 306.201, a provision found in 35 Ill. Adm. Code, Subtitle C, Defendant thereby violated Standard Condition 27 of the NPDES Permit.

38. By violating Standard Condition 27 of the NPDES Permit, Defendant thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

39. By violating Sections 305.102(b) and 306.201 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 306.201, Defendant thereby violated Section

12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

40. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff, and against Defendant, 401 NORTH WABASH VENTURE, LLC, d/b/a TRUMP INTERNATIONAL HOTEL & TOWER:

A. Finding that Defendant has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Sections 305.102(b), 306.201, and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, and 309.102(a);

B. Ordering Defendant to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Sections 305.102(b), 306.201, and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, and 309.102(a);

C. Ordering Defendant to immediately take the necessary actions that will result in a final and permanent abatement of the violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Sections 305.102(b), 306.201, and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, and 309.102(a);

D. Assessing against Defendant 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) (2022), and Sections 305.102(b), 306.201, and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, and 309.102(a);

E. Taxing all costs in this action, including attorney, expert witness, and consultant fees, against Defendant; and

F. Granting such other relief as this court deems appropriate and just.

COUNT IV
MISREPORTING DISCHARGE FLOW IN MONTHLY DMRs

1-31. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 28 of Count I and paragraphs 25, 26, and 31 of Count III, as paragraphs 1 through 31 of this Count IV.

32. On October 16, 2012, Defendant submitted to Illinois EPA an application to modify the terms of its NPDES permit due to the fact that Defendant submitted an incorrect discharge flow in its initial permit application.

33. Based on the information provided to Illinois EPA in Defendant's application to modify the terms of its NPDES Permit, on March 15, 2013, Illinois EPA issued to Defendant its NPDES Permit with an increased average discharge flow of 19.7 million gallons per day.

34. Paragraph 9 of the October 1, 2018 Agreed Interim Order entered in this matter, provides that Defendant must comply with all terms and provisions of its NPDES Permit, except for Condition 8, which was deemed inapplicable, unless and until such time that Illinois EPA issues Defendant a renewed NPDES Permit for the Facility.

35. Paragraph 11 of the October 1, 2018 Agreed Interim Order entered in this matter provides:

Violations of the terms and provisions of NPDES Permit No. IL0079812 as set forth in Paragraph 9 above shall be enforceable by this Interim Order and are subject to civil penalties as provided for in Section 42(b)(i) of the Act, 415 ILCS 5/42(b)(i) (2016) and Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§1319, 1365, in addition to stipulated penalties as provided for in this Interim Order.

36. Paragraph 23 of the October 1, 2018 Agreed Interim Order entered in this matter provides:

Stipulated penalties shall be in addition to, and not a substitute for, any other remedy available to Plaintiff or Plaintiff-Intervenors, including, but limited to, civil penalties as provided in Section 42(b)(1) of the Act, 415 ILCS 5/42 (2016), 33 U.S.C. § 1365, or under common law.

37. Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275, provides, in relevant part, as follows:

“Effluent” means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater or sludges, but does not otherwise include nonpoint source discharges such as runoff from land or any livestock management facility or livestock waste handling facility subject to regulation under Subtitle E.

38. The thermal process wastewater from the CWIS at the Facility discharged from Defendant’s NPDES Outfall 001 is “effluent” as that term is defined by Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275.

39. Defendant’s NPDES Permit refers to the volume of heated effluent discharged from Outfall No. 001 of the NPDES permit over time as “flow”. The discharge flow is distinct from intake flow as defined in 40 C.F.R. § 125.83 and the subject of Count II of this Second Amended Complaint to the extent that the former is a measure of outgoing water and the latter a measure of ingoing water.

40. Page 2 of Defendant’s NPDES Permit sets effluent limitations and monitoring requirements for its discharges of heated effluent from the CWIS at the Facility as follows:

From the modification date of this permit until expiration date, the effluent of the following discharge(s) shall be monitored and limited at all times as follows:

Outfall 001-Non-Contact Cooling Water, Unused River Water, and Strainer Backwash (Average Flow = 19.7 MGD)

* * *

Parameter: Flow (MGD)

Load Limits: See Special Condition 1

Sample Type: Measure

41. Standard Condition 1 of Defendant’s NPDES Permit provides, in relevant part, as follows:

Duty to comply. The permittee must comply with all conditions of this permit....

42. Standard Condition 12(e)(1) of Defendant’s NPDES Permit provides as follows:

* * *

Monitoring results must be reported on a Discharge Monitoring Report (DMR).

* * *

43. Special Condition 1 of Defendant’s NPDES Permit provides as follows:

Flow shall be measured in units of Million Gallons per Day (MGD) and reported as a monthly average and a daily maximum on the Discharge Monitoring Report.

44. Attachment H of Defendant’s NPDES Permit provides the following definitions:

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Maximum Daily Discharge Limitation (daily maximum) means the highest allowable daily discharge.

Average Monthly Discharge Limitation (30 day average) means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

45. Pursuant to Standard Condition 12(e)(1) and Special Condition 1 of Defendant's NPDES Permit, Defendant was and is required to measure its discharge flow of heated effluent from the CWIS at the Facility in units of MGD and report to Illinois EPA a monthly average and a daily maximum on a Discharge Monitoring Report ("DMR").

46. Defendant uses a building automation system (the "BAS") to generate spreadsheets with a new entry for every hour of the volume of heated effluent discharged ("Hourly Discharge Flow Logs") from the CWIS through Outfall 001 at the Facility. Defendant uses the Hourly Discharge Flow Logs generated by the BAS to calculate a monthly average and a daily maximum discharge flow and submits the results to Illinois EPA on a DMR.

47. During discovery, Defendant produced its Hourly Discharge Flow Logs to Plaintiff. Some of the Hourly Discharge Flow Logs were labeled as measured in gallons per minute, while other Hourly Discharge Flow Logs omitted any corresponding units of measurement.

48. At various times, Defendant has represented the Hourly Discharge Flow Logs generated by the BAS are measured in pulses per day, pulses per hour, and gallons per minute.

49. On May 22, 2023, Illinois EPA requested additional information ("Information Request Letter") from Defendant based on review of Defendant's pending NPDES permit renewal application in light of the varying statements regarding the Hourly Discharge Flow Logs and the corresponding units of measurement.

50. On June 19, 2023, Defendant responded by letter to Illinois EPA's Information Request Letter ("June 19, 2023 Response") and stated the Hourly Discharge Flow Logs generated by the BAS are measured in pulses per day. Defendant also represented it was in the process of an internal audit to confirm the accuracy of its discharge flow calculations.

51. Defendant explained its conversion process in its June 19, 2023 Response as follows:

The enclosed [Hourly Discharge Flow Logs] [are] generated by the monitoring device and accompanying software attached to the cooling water intake system (“CWIS”) at 401 North. Column D on the enclosed reports, noted as “CWRD-F” and/or “CWRRL-F” contains the discharge calculation that formed the basis of what was reported to IEPA via the DMRs. The numbers reflected in Column D were and are believed to be the number associated with the average “pulse” calculations during a day. Given that each pulse is approximately 1,000 gallons total, Column D was multiplied by 1,000, which is roughly the total number of gallons consumed by a single “pulse” per day . . . Since the DMR sought a monthly calculation based on million gallons per day, this total was then divided by one million in order to decipher the MGD number reflected in the DMR¹.

52. On August 14, 2023, Defendant provided a follow-up response by letter representing that: “[t]he audit indicates that data is currently reported in gallons per minute (GPM).” However, Defendant further stated that: “[d]espite the diligent efforts of 401 and its retained engineers, 401 is not yet able, as of today, to confirm the accuracy of past reports.”

53. In contrast to Defendant’s conversion process, to accurately convert the Hourly Discharge Flow Logs generated by the BAS from gallons per minute to MGD as required by Special Condition 1 of Defendant’s NPDES Permit, Defendant must take the following actions²:

¹ Based on Defendant’s June 19, 2023 Response, the mathematical equation for Defendant’s conversion process is as follows:

$$\{\text{Flow}\} \frac{\text{pulses}}{\text{day}} \times \frac{1000 \text{ gallons}}{1 \text{ pulse}} \times \frac{1 \text{ Millions Gallons}}{1,000,000 \text{ gallons}} = \{\text{Flow}\} \frac{\text{Million Gallons}}{\text{Day}}$$

² To accurately convert the Hourly Discharge Flows generated by the BAS from gallons per minute to MGD, the mathematical equation is as follows:

$$\{\text{Flow}\} \frac{\text{gallons}}{\text{minute}} \times \frac{60 \text{ minutes}}{1 \text{ hour}} \times \frac{24 \text{ hour}}{1 \text{ Day}} \times \frac{1 \text{ Millions Gallons}}{1,000,000 \text{ gallons}} = \{\text{Flow}\} \frac{\text{Million Gallons}}{\text{Day}}$$

- A: Multiply the Hourly Discharge Flow Logs generated by the BAS and measured in gallons per minute by 60 to convert the data to gallons per hour;
- B: Multiply the result from A above by 24 to convert the data from gallons per hour to gallons per day; and
- C: Divide the resulting data from B above by 1,000,000 to convert the data from gallons per day to MGD.

54. The gallons per minute data in Defendant's Hourly Discharge Flow Logs, when properly converted to MGD by multiplying the monthly average by 60 then by 24, divided by 1,000,000, results in Monthly Average flow per Day figures that exceed the Monthly Average flow per Day figures Defendant submitted to Illinois EPA on its monthly DMRs.

55. As demonstrated by the Hourly Discharge Flow Logs and the corresponding data Defendant submitted to Illinois EPA in its monthly DMRs, Defendant failed to properly convert the data from the Hourly Discharge Flow Logs from gallons per minute to MGD on its monthly DMR submittals. Therefore, since at least February 2013, or on a date or dates better known to Defendant, Defendant reported inaccurate discharge flow to Illinois EPA.

56. By reporting inaccurate discharge flow on its monthly DMRs, Defendant failed to submit to Illinois EPA the monthly averages and daily maximums of its discharge flow of heated effluent from the CWIS at the Facility in MGD, thereby violating Special Condition 1 of its NPDES Permit, and therefore also violating Standard Condition 1 of its NPDES Permit.

57. By violating Special Condition 1 and Standard Condition 1 of its NPDES Permit, Defendant also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Section 309.102(a) of

the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Paragraph 9 of the October 1, 2018 Agreed Interim Order.

58. By failing to comply with the reporting requirements set forth in Special Condition 1 of its NPDES Permit, Defendant violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b).

59. Standard Condition 10(a) and (d) of Defendant’s NPDES Permit, in relative part, provide:

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

* * *

(d) ...The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to ensure accuracy of measurements.

60. Standard Condition 11(d) of Defendant’s NPDES Permit, in relative part, provides:

* * *

Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that . . . the information submitted is, to the best of my knowledge and belief, true, accurate, and complete....

61. Standard Condition 21 of Defendant’s NPDES Permit provides as follows:

The permittee shall not make any false statement, representation or certification in in any application, record, report, plan or other document submitted to the Agency or the USEPA, or required to be maintained under this permit.

62. Since at least February 2013, or on a date or dates better known to Defendant, Defendant submitted monthly DMRs to Illinois EPA certifying that the information submitted was true, accurate, and complete. However, by failing to correctly convert the data from the

Hourly Discharge Flow Logs generated by the BAS from gallons per minute to MGD on its monthly DMRs, Defendant failed to submit information that was true, accurate, and complete, thereby misreporting the discharge flow of heated effluent from its CWIS to Illinois EPA.

63. By misreporting the discharge flow of heated effluent from its CWIS to Illinois EPA but certifying that the data was true, accurate, and complete, Defendant violated Standard Conditions 10(a) and (d), 11(d), and 21 of its NPDES Permit, and therefore also violated Standard Condition 1 of its NPDES Permit.

64. By violating Standard Conditions 1, 10(a) and (d), 11(d), and 21 of its NPDES Permit, Defendant also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Paragraph 9 of the October 1, 2018 Agreed Interim Order.

65. By failing to comply with reporting requirements set forth in Standard Conditions 1, 10(a) and (d), 11(d), and 21 of its NPDES Permit, Defendant violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b).

66. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff, and against Defendant, 401 NORTH WABASH VENTURE, LLC, d/b/a TRUMP INTERNATIONAL HOTEL & TOWER:

A. Finding that Defendant has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Paragraph 9 of the October 1, 2018 Agreed Interim Order, and Sections 305.102(b) and

309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a);

B. Ordering Defendant to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Paragraph 9 of the October 1, 2018 Agreed Interim Order, and Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a);

C. Ordering Defendant to immediately take the necessary actions that will result in a final and permanent abatement of the violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), Paragraph 9 of the October 1, 2018 Agreed Interim Order, and Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a);

D. Assessing against Defendant 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) (2022), Paragraph 9 of the October 1, 2018 Agreed Interim Order, and Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a);

E. Taxing all costs in this action, including attorney, expert witness, and consultant fees, against Defendant; and

F. Granting such other relief as this court deems appropriate and just.

COUNT V
VIOLATION OF BOARD REGULATIONS

1-122. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 33 of Count I, paragraphs 25 through 64 of Count II, paragraphs 25 through 39 of Count III, and paragraphs 32 through 65 of Count IV, as paragraphs 1 through 122 of this Count V.

123. Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), 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.

124. By violating Sections 305.102(b), 306.201, 309.102(a), and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, 309.102(a), and 309.104(a), Defendant caused, threatened or allowed the discharge of contaminants in violation of regulations adopted by the Pollution Control Board under the Act, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022).

125. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff, and against the Defendant, 401 NORTH WABASH VENTURE, LLC, d/b/a TRUMP INTERNATIONAL HOTEL & TOWER:

A. Finding that the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), and Sections 305.102(b), 306.201, 309.102(a), and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, 309.102(a), and 309.104(a);

B. Ordering the Defendant to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), and Sections 305.102(b), 306.201, 309.102(a), and

309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, 309.102(a), and 309.104(a);

C. Ordering the Defendant to immediately take the necessary actions that will result in a final and permanent abatement of the violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), and Sections 305.102(b), 306.201, 309.102(a), and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, 309.102(a), and 309.104(a);

D. Assessing against Defendant a civil penalty of Fifty Thousand Dollars for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), and Sections 305.102(b), 306.201, 309.102(a), and 309.104(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), 306.201, 309.102(a), and 309.104(a), and an additional Ten Thousand Dollars (\$10,000) per day that each violation continued to occur;

E. Taxing all costs in this action, including attorney, expert witness, and consultant fees, against Defendant; and

F. 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/ Stephen J. Sylvester*
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

ELIZABETH DUBATS

ANN MARIE HANOHANO

CHRISTOPHER GRANT

REBECCA KANZ

MOLLY KORDAS

Assistant Attorneys General

Environmental Bureau

69 West Washington Street, Suite 1800

Chicago, Illinois 60602

(312) 814-3000

primary e-mail: Elizabeth.Dubats@ilag.gov

secondary email: Annmarie.Hanohano@ilag.gov

secondary email: Maria.Cacaccio@ilag.gov