

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

**PEOPLE OF THE STATE OF ILLINOIS )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois )  
 )  
Plaintiff, )  
 )  
and )  
 )  
SIERRA CLUB and FRIENDS OF THE )  
CHICAGO RIVER, )  
 )  
Plaintiff-Intervenors, )  
 )  
v. )  
 )  
401 N. WABASH VENTURE LLC d/b/a )  
TRUMP INTERNATIONAL HOTEL )  
AND TOWER )  
 )  
Defendant. )**

**No. 2018-CH-10229**

**AMENDED COMPLAINT IN INTERVENTION FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

1. SIERRA CLUB and FRIENDS OF CHICAGO RIVER (“Plaintiff-Intervenors”) bring this action to stop ongoing violations of the Clean Water Act, 33 U.S.C. § 1251 et seq. (the “CWA”), committed by, and the public nuisance created by, defendant 401 N. WABASH VENTURE LLC, doing business as TRUMP INTERNATIONAL HOTEL AND TOWER (“Defendant” or “Trump Intentional”). From its facility located at 401 N. Wabash Avenue, Chicago, IL 60611 (“Trump Tower”), Defendant has discharged in violation of a National Pollutant Discharge Elimination System (“NPDES”) permit that it held between 2013 and 2017 and has discharged without a permit since August 31, 2017. Defendant’s ongoing operation and discharges from Trump Tower continue to violate the terms of its now-expired NPDES permit.

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Specifically, Defendant has never complied with the laws, regulations, or permit conditions that govern its intake of massive volumes of Chicago River water and relate to the impingement and entrainment of fish and other aquatic life. Now, after its NPDES permit has expired, Defendant is discharging without being subject to any specified permit limits or conditions designed to protect aquatic life, recreation or other uses of the Chicago River. Trump International continues to violate the law in another, distinct way through its regular, recurring misrepresentation of flow rate to the Illinois Environmental Protection Agency (“IEPA”) in its monthly Discharge Monitoring Reports (“DMRs”). In addition, the Defendant is interfering with the common rights of the public to fish, canoe, and otherwise to recreate in the Chicago River by operating a facility that operates without a permit and fails to minimize its impact on fish and aquatic life.

#### **VENUE AND JURISDICTION**

2. The subject matter of this dispute is located in Cook County, Illinois. Defendant operates in Cook County, and its withdrawals and discharges occur in Cook County. Cook County is the appropriate venue for this dispute. 735 ILCS 5/2-101 (West 2016); 33 U.S.C § 1365(c)(1).

3. The circuit court has jurisdiction over this matter pursuant to Illinois Constitution, Art. VI, § 9 (“Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court [of Illinois] has original and exclusive jurisdiction \* \* \* .”)

4. Plaintiff-Intervenors bring Counts I and III of this Complaint pursuant to federal law, over which state courts generally have concurrent jurisdiction, and bring Count II under the common law of public nuisance of the State of Illinois.

5. On June 14, 2018, Plaintiff-Intervenors served a Notice of Intent to Sue (“NOI”) upon the Defendant by mailing that NOI via certified mail to Defendant, the United States

Environmental Protection Agency, the IEPA, and the Illinois Attorney General, as required under 33 U.S.C. § 1365(b)(1). The NOI meets the requirements of 40 C.F.R. §§ 135.1 et seq. and provided the Defendant with notice of the CWA violations alleged in Count I of this Amended Complaint in Intervention. A copy of the NOI, including its several original attachments, is Attachment 1 to this Complaint.

6. On July 10, 2023, Plaintiff-Intervenors served a second Notice of Intent to Sue (“2023 NOI”) upon the Defendant by mailing that 2023 NOI via certified mail to Defendant, the United States Environmental Protection Agency, the IEPA, and the Illinois Attorney General, as required under 33 U.S.C. § 1365(b)(1). The 2023 NOI meets the requirements of 40 C.F.R. §§ 135.1 et seq. and provided Defendant with notice of the CWA violations alleged in Count III in this Amended Complaint. A copy of the 2023 NOI, including its several original attachments, is Attachment 2 to this Amended Complaint.

7. In this case charging Defendant with violating the Clean Water Act and causing a public nuisance through water pollution, Plaintiff-Intervenors have standing to sue under the Clean Water Act, Illinois common law and Article XI of the Illinois Constitution.

### **PARTIES**

8. Plaintiff-Intervenor Sierra Club, a not-for-profit corporation organized and existing under the laws of the State of California, is a national environmental organization with approximately 789,000 members with offices and programs authorized and doing business in the State of Illinois, including Chicago, Illinois. As of June 2018, 30,556 of these members belong to the Illinois Chapter. The Sierra Club’s purpose is to protect the natural environment and promote the responsible use of the Earth’s ecosystems and resources. Members of the Sierra Club fish and

otherwise seek to enjoy natural life and recreation in the Chicago River, including in the area immediately adjacent to Trump Tower.

9. Plaintiff-Intervenor Friends of the Chicago River (“FOCR”) is a not-for-profit corporation organized and existing under the laws of the State of Illinois, whose mission is to improve and protect the Chicago River system for people, plants, and animals. FOCR works to improve the water quality of the river so that it can support native plants, fish and other wildlife, and a variety of recreational uses; performs on-the-ground projects that result in physical improvements and the preservation of quality habitat; and engages in education and outreach programs that inform and inspire people to help revitalize the Chicago River. As of August 2018, FOCR has 6,000 members, volunteers and online advocates, many of whom fish and otherwise seek to enjoy natural life and recreation in the Chicago River, including in the area immediately adjacent to Trump Tower. FOCR has held events designed to promote fishing in the segment of the Chicago River affected by the violations alleged.

10. Plaintiff-Intervenors each have members who are directly interested in and affected by Defendant’s withdrawal of water from the Chicago River and discharges to the Chicago River. Some of those members use the Chicago River for fishing, canoeing, kayaking, bicycling, and other River-adjacent recreational activities that have been and, if Defendant is not enjoined, will continue to be affected by Defendant’s unlawful withdrawals and discharges.

11. Defendant 401 N. Wabash Venture LLC, 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, which is located at 725 5th Avenue, 26th Floor, New York, NY 10022. Defendant also does business as “Trump International Hotel & Tower.” Upon

information and belief, Defendant owns and operates Trump Tower. When there was a valid NPDES permit for Trump Tower, that permit was numbered IL0079812 and was issued to “Trump International Hotel & Tower” (the “2013 NPDES Permit”). Defendant does not own either side of the Chicago River.

### **FACTUAL AND LEGAL BACKGROUND**

12. Trump Tower was built on the site of the former Chicago Sun Times building.
13. Trump Tower is located along the north bank of the Chicago River.
14. Construction of Trump Tower began in or around March of 2005. (See Attachment 1, NOI Ex. E (“Trump’s Triumphant Tower”).)
15. Trump Tower uses a heating, ventilation, and air conditioning (“HVAC”) system that contains a cooling water intake/discharge system.
16. Trump Tower’s last effective permit authorized the cooling water intake/discharge system to withdraw approximately 19.7 million gallons per day (“MGD”) from the Chicago River and returns approximately the same volume in the form of heated effluent through an outfall designated as “Outfall No. 001.”
17. 100% of the water withdrawn by Trump Tower is used for cooling purposes.
18. There are two water intake structures at 401 N. Wabash Avenue.
19. When Trump Tower was constructed, the building retained the water intake structure that previously existed there, the site of the former Chicago Sun Times building.
20. A second, “new” intake was constructed for Trump Tower, sometime after March 2005. Numerous documents state this is a new facility and separate from the Chicago Sun Times intake. (See Attachment 1, NOI Exs B, C, and D.) As explained by one of Trump International’s

consultants, “[o]ne intake was constructed during the hotel project (the new intake), and one intake was existing from the Chicago Sun Times Building.” (Attachment 1, NOI Ex. C.)

21. Heated effluent is considered a “pollutant” under the Clean Water Act. 33 U.S.C. § 1362(6).

22. Under the Clean Water Act, discharge of a pollutant is illegal unless the discharger obtains a NPDES permit and is permissible only to the extent the discharger acts in compliance with such properly issued NPDES permit. 33 U.S.C. § 1342.

23. Because Trump International planned to and did in fact discharge heated effluent into the Chicago River, it was required to obtain a NPDES permit.

24. Beginning not later than May 2008, Trump International used the new intake and discharged heated effluent without a required NPDES permit. (Attachment 1, NOI Ex. F.)

25. In September 2011, IEPA issued a notice of violation to Trump International alleging that Defendant was discharging pollutants and had constructed a discharging facility without a required NPDES permit. Trump International resolved those violations by, among other things, agreeing to pay a \$46,000 fine in 2013. (Attachment 1, NOI Exs F and G).

26. At the time of construction, Defendant relied on the guidance of their outside engineering consultant, OLKO Engineering (“OLKO”), to determine the need for a permit. (See Defendant’s Answer and Affirmative Defenses Answer No. 24).

27. Defendant was told by OLKO in 2005 that they needed a permit from IEPA to withdraw water from the Chicago River at their planned facility.

28. In September 2012, Trump International received a permit to discharge an average of 13,644 gallons of water per day. (Attachment 1, NOI Ex. H).

29. This permit limit of 13,664 gallons of water per day was based on the data Trump International provided to IEPA as part of its permit application.

30. In October 2012, a consultant employed by Trump International wrote to IEPA to inform the agency that Trump Tower had been misreading a meter and was actually withdrawing and discharging more than one thousand times more water than it reported on its application, and that it was permitted to discharge under the September 2012 permit. According to that letter, the actual flow, correctly calculated was a monthly average of 19.7 MGD with a daily maximum of 26.6 MGD. (Attachment 1, NOI Ex. I).

31. On March 15, 2013, IEPA issued Trump International the 2013 NPDES Permit, a modified permit to discharge an average flow of 19.7 million gallons per day. (Attachment 1, NOI Ex. A.)

32. Special Condition 8 of the 2013 NPDES Permit required Trump International to submit certain information to IEPA within six months, i.e. by September 2013. The information was required to allow IEPA to make a Best Professional Judgment that would determine the Best Practicable Technology for the cooling water intake structures at Trump Tower.

33. Specifically, Special Condition 8 of that permit states:

In order for the Agency to evaluate the potential impacts of cooling water intake structures operations pursuant to 40 CFR 125.90(b), the 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.

This 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.

34. Additionally, Standard Condition 27 of the Permit states that “the permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 Ill. Adm. Code, Subtitle C \* \* \* .”

35. Section 306.201 of that subtitle requires new water intake structures to “be so designed as to minimize harm to fish and to other aquatic organisms.” 35 Ill. Adm. Code § 306.201.

36. 40 CFR 125 Subpart I (40 CFR §125.80 et seq.) establishes requirements under Section 316(b) of the Clean Water Act for dischargers having cooling water intake structures that are “new facilities.” Under the law, a “new facility” is one constructed after January 17, 2002. 40 CFR §125.83.

37. In January 2018, IEPA gave notice of a new draft permit for the Facility. (Attachment 1, Ex. B). In the Fact Sheet for the draft 2018 permit, IEPA stated:

The following Special Condition language was in the previous permit for 316(b). “In order for the Agency to evaluate the potential impacts of cooling water intake structure operations pursuant to 40 CFR 125.90(b), the permittee shall prepare and submit information to the Agency outlining current intake structure conditions at this facility, including a detailed description of the current intake structure operation and design, description of any operational or structural modifications from original design parameters, source waterbody flow information, or other information as necessary.

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

Upon the receipt and review of this information, the permit may be modified to require the submittal of additional information based on a Best Professional Judgment review by the Agency. This permit may also be revised or modified in accordance with any laws, regulations, or judicial orders pursuant to Section 316(b) of the Clean Water Act.”

The facility did not submit this information to the Agency as required by the special condition. The information that is discussed above was provided by the facility and submitted after the renewal application was received by the Agency.



40 CFR 122.21(r)(1)(ii) states that all existing facilities must submit for review the information required under paragraphs (r)(2) – (8). At this time the facility has not submitted any of this information.

38. The federal regulations cited in the IEPA public notice apply only to “existing facilities” and are therefore inapplicable to Trump Tower. Trump Tower was built after 2002, which requires the facility to be considered “new” for purposes of the CWA. See 40 C.F.R. § 125.83.

39. “New facilities” must supply information and studies complying with 40 C.F.R. §122.21(r) 180 days before commencement of water withdrawals, 40 C.F.R. §122.21(c)(1), and must comply with the requirements of 40 C.F.R. §§ 125.80–.89 subpart I before discharging.

40. The IEPA public notice indicates that Trump International did submit some of the data it was required to submit in 2013, though that submission appears to have been made four years later in 2017. (Attachment 1, NOI Ex. C). Based upon information and belief, however, Trump International has never supplied current impingement mortality and entrainment characterization data or supplied fully other data required under Special Condition 8, and Trump International has not submitted the data required of a new facility under 40 CFR §122.21(r)(1)(i) and 40 CFR 125 subpart I.

41. Further, upon information and belief, Trump International has not taken proper steps to minimize the impact of its intake on fish and other wildlife.

42. While operating under the 2013 NPDES permit, Trump International must comply with the reporting requirements of the 2013 NPDES permit.

43. Federal regulations in 40 C.F.R. § 122.41 establish reporting and monitoring requirements for NPDES permit holders under Section 402(b) of the Clean Water Act.

44. Federal regulations in 40 C.F.R. § 122.41(1)(4)(i) and standard condition 12(e)(1) of the 2013 NPDES Permit require Trump Tower to report monitoring results on a DMR specified by IEPA.

45. Special Condition 1 of the 2013 NPDES Permit requires that “flow shall be measured in units of Million Gallons per Day (“MGD”) and reported as a monthly average and a daily maximum on the [DMR].” (Attachment 1, NOI Ex. A).

46. Special Condition 3 of the 2013 NPDES Permit further clarifies that “the permittee shall record monitoring results on Discharge Monitoring Report Forms using one such form for outfall each month.” (Attachment 1, NOI Ex. A).

47. Federal regulations in 40 C.F.R. § 122.22 require that “all reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a).”

48. Federal regulations in 40 C.F.R. § 122.22(a)(1) require the signature of “a responsible corporate officer.”

49. In the case of Trump International, upon information and belief, such person signing its DMR submissions has been a corporate officer in charge of a principal business function or someone performing a similar decision-making function for the corporation.

50. From May 2010 to April 2017, Trump International’s designated corporate officer tasked with confirming the accuracy of the reports was its Director of Finance, John Gorski, who did not have a background in engineering.

51. 40 C.F.R § 122.22(d) and Standard Condition 11(d) of the 2013 NPDES Permit state that the person signing reports required under the 2013 NPDES Permit shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

52. It is a violation of Standard Condition 21 of the 2013 NPDES Permit to make false statements in DMRs. (Attachment 1, NOI Ex. A, “The permittee shall not make any false statement, representation or certification in any application, record, report, plan or other document submitted to the Agency or USEPA, or required to be maintained under this permit.”)

53. Since at least February 2013, Trump International has inaccurately reported to IEPA the flow rates of its water intake.

54. Specifically, Trump International has been reporting flow rates on its DMRs that it measures in gallons per minute (“GPM”), as recorded by the building’s automated system.

55. Trump International is aware that Special Condition 1 of the 2013 NPDES permit requires that it report its flow rates.

56. Trump International has produced flow rate data in this litigation. This flow rate data is generated by Trump International’s building automated systems, which records flow rates in units of GPM.

57. Trump International’s flow rate data produced in this litigation, when converted from GPM to MGD, the required unit by IEPA, results in flow rates higher than the figures Trump International reported to IEPA in its DMRs.

58. For example, a reading of Figure 2-2 in the Comprehensive Demonstration Study indicates that the average July flow rate from 2015 to 2019 was approximately 10.3 MGD;

however, the July flow rate averages from 2016 to 2019, calculated based on hourly flow rate logs, range from 12.2 MGD to 14.2 MGD.

59. To convert from GPM to MGD, the GPM figure must be divided by 1,000,000 (to convert to millions of gallons) and multiplied by 1,440 (to convert minutes to days).

60. The information Defendant provides IEPA in its DMRs does not reflect this conversion.

61. Defendant, therefore, continues to misreport its flow rates in its DMRs.

62. By failing to convert GPM to MGD correctly, Defendant has reported flow rates to IEPA that are lower than Defendant's actual flow rates.

63. Flow rates are proportional to estimated entrainment, thus, Trump International's environmental impact has been misrepresented to IEPA.

64. On August 14, 2023, counsel for Trump International confirmed that the underlying reports are recorded in GPM. (Attachment 3, Trump International August 14, 2023 Letter to IEPA).

65. As of August 14, 2023, counsel for Trump International stated that Trump International still records and reports its flow rates in GPM on DMRs submitted to IEPA and declared that Trump International will continue to record and report flow rates in units of GPM. (Attachment 3, Trump International August 14, 2023 Letter to IEPA).

66. Defendant continues to report its flow rates in GPM in its DMRs.

67. Violations of conditions in an NPDES permit constitute a violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). See also *Natural Resources Defense Council v. Metropolitan Water Reclamation District*, 175 F. Supp. 3d 1041, 1052–53 (N.D. Ill. 2016).

68. On August 31, 2017, the NPDES permit for Trump International—which IEPA issued in 2012 and modified in 2013—expired.

69. The Agreed Interim Order entered in this matter on September 28, 2018 (Attachment 4, Agreed Interim Order) requires Trump International to continue to comply with the terms of the expired and unrenewed 2013 NPDES permit.

70. The permit terms of the 2013 NPDES Permit continue to apply to Trump Tower’s operation. (Attachment 4, Agreed Interim Order).

71. The Agreed Interim Order also required Trump International to undertake certain studies pursuant to 40 C.F.R. § 125.86. (Attachment 4, Agreed Interim Order ¶ 14).

72. Trump International has undertaken some of the studies required under the Agreed Interim Order.

73. In conducting those studies, Trump International or consultants retained on its behalf relied on its previously-submitted DMRs for flow rate data.

74. In review, Trump International has neither (1) performed studies required by Special Condition 8 of the 2013 NPDES Permit, nor (2) undertaken the work necessary to minimize damage to aquatic life from its intake structures, nor (3) correctly reported flow monitoring conditions of the 2013 NPDES Permit, nor (4) complied with the requirements for new facilities under 40 C.F.R. §125.80 et seq.

75. Therefore, Trump International has violated and will continue to violate the 2013 NPDES Permit, Section 301(a) of the federal Clean Water Act, 33 U.S.C. § 1311(a), 40 CFR §122.21(r), 40 CFR 125 subpart I, and 35 Ill. Adm. Code Subpart C, at Section 306.201.

76. On August 13, 2018, the State of Illinois filed a COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES (the “State Complaint”). Plaintiff-Intervenor

hereby incorporates the allegations of the State Complaint to the extent those allegations are not inconsistent with the allegations set forth herein.

77. On September 18, 2023, the State of Illinois Filed a SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES (the “State Amended Complaint”). Plaintiff-Intervenor hereby incorporates the allegations of the State Amended Complaint to the extent those allegations are not inconsistent with the allegations set forth herein.

### COUNT I – CLEAN WATER ACT

78. Plaintiff-Intervenors repeat and reallege paragraphs 1 through 77 as though set forth here.

79. At all times relevant to this complaint, Trump International has discharged and continues to “discharge” heated water; heated water is a “pollutant” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, into the Chicago River.

80. Trump International’s pollutant discharges are discharges from a “point source” into “navigable waters” of the United States within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

81. The Chicago River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

82. The citizen-suit provision of the Clean Water Act, 33 U.S.C. § 1365, provides that “any citizen may commence a civil action \* \* \* against any person \* \* \* alleged to be in violation of [ ] an effluent standard or limitation under this chapter,” including any limitations imposed by a NPDES permit. 33 U.S.C. § 1365(a); § 1311(a) (compliance with “effluent

limitations” defined as including requirement to comply with 33 U.S.C. § 1342); § 1342 (requiring compliance with conditions imposed in NPDES permit).

83. Plaintiff-Intervenors are “citizen[s],” because they are “persons having an interest which is or may be adversely affected” by Trump International’s violations of the Clean Water Act. 33 U.S.C. §§ 1365(a) and 1365(g).

84. Plaintiff-Intervenors satisfied the applicable notice requirements of 33 U.S.C. § 1365(b)(1).

85. Trump International has failed and continues to fail to comply with 40 CFR 122.21(r) and 40 CFR 125.84, which set out permit application and operation requirements related to cooling water intakes at new facilities.

86. Since it opened in 2008 and began operation of its cooling water intake structure, Trump International has been and continues to violate 35 Ill. Adm. Code § 306.201, which is independently applicable and incorporated into the 2013 NPDES Permit through Special Condition 27 and which requires new water intake structures to “be so designed as to minimize harm to fish and to other aquatic organisms.” *Id.*

87. Defendant has violated its NPDES permit by failing to meet the conditions of the 2013 NPDES Permit and continues to operate the facilities that caused those violations without complying with the conditions of the permit it received. Unless enjoined, it may violate NPDES permits that it is issued in the future with regard to the operation of Trump Tower.

88. Each day in which Trump International has discharged in violation of its 2013 NPDES Permit, the CWA, or state or federal regulations promulgated thereunder constitutes a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and is actionable under Section 505 of the CWA, 33 U.S.C. § 1365(a)(1).

89. Pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1–19.4, Trump International is liable for injunctive relief and civil penalties of up to \$37,500 per day for each of violations occurring from January 12, 2009 through November 2, 2015 and up to \$52,414 per day for each of violations occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1–19.4.

## COUNT II – PUBLIC NUISANCE

90. Plaintiff-Intervenors repeat and reallege paragraphs 1 through 89 as though set forth here.

91. A public nuisance is “virtually any form of annoyance or inconvenience interfering with common public rights.” *City of Chicago et al. v. Beretta U.S.A. Corp. et al.*, 213 Ill. 2d 351, 365 (2004) (adopting definition of Restatement of Torts). See also Restatement (Second) of Torts § 821B (1979) (“A public nuisance is an unreasonable interference with a right common to the general public.”).

92. Under Illinois law, “[i]t is a public nuisance \* \* \* to corrupt or render unwholesome or impure the water of a \* \* \* river \* \* \* to the injury or prejudice of others.” 720 ILCS 5/47-5(3) (West 2018).

93. Members of Plaintiff-Intervenors’ organization, as all members of the public, have a right to fish, canoe and otherwise recreate in the Chicago River, which is a navigable public water of the State over which Defendant does not have ownership rights.

94. By operating a 20 MGP intake and discharging for years in violation of permit conditions and regulations designed to protect aquatic life, and by continuing to operate said intake without obtaining permits containing appropriate limits or minimizing its impact on aquatic life, Defendant has substantially and unreasonably interfered in Plaintiff-Intervenors



right to fish and otherwise recreate in the Chicago River and may substantially so interfere in the future.

95. Plaintiff-Intervenors have been injured by the unreasonable conduct of Defendant to a currently unknown degree and in an amount to be determined through discovery and at trial and reflective of the extent of harms to aquatic life, ecosystems, and economic and other interests in the Chicago River caused by the unreasonable conduct of Defendant.

### COUNT III – CLEAN WATER ACT

96. Plaintiff-Intervenors repeat and reallege paragraphs 1 through 95 as though set forth here.

97. At all times relevant to this complaint, Trump International has discharged and continues to “discharge” heated water; heated water is a “pollutant” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, into the Chicago River.

98. Trump International’s pollutant discharges are discharges from a “point source” into “navigable waters” of the United States within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

99. The Chicago River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

100. The citizen-suit provision of the Clean Water Act, 33 U.S.C. § 1365, provides that “any citizen may commence a civil action \* \* \* against any person \* \* \* alleged to be in violation of [ ] an effluent standard or limitation under this chapter,” including any limitations imposed by a NPDES permit. 33 U.S.C. § 1365(a); § 1311(a) (compliance with “effluent limitations” defined as including requirement to comply with 33 U.S.C. § 1342); § 1342 (requiring compliance with conditions imposed in NPDES permit).

101. Plaintiff-Intervenors are “citizen[s],” because they are “persons having an interest which is or may be adversely affected” by Trump International’s violations of the Clean Water Act. 33 U.S.C. §§ 1365(a) and 1365(g).

102. Plaintiff-Intervenors satisfied the applicable notice requirements of 33 U.S.C. § 1365(b)(1).

103. Trump International has failed and continues to fail to comply with 40 CFR 122.41 and 40 CFR 122.22, which set out permit reporting and monitoring duties related to cooling water intakes at new facilities.

104. Trump International has violated and continues to violate Section 402(b) of the CWA, 40 C.F.R. § 122.41, 40 C.F.R. § 122.22, and Special Conditions 1 and 3 of the 2013 NPDES Permit each and every month when it submits a DMR to IEPA that reports flow data recorded in GPM when the 2013 NPDES permit requires reporting in MGD.

105. Defendant has violated its 2013 NPDES permit by failing to meet the reporting duties of the 2013 NPDES Permit and continues to operate the facilities that caused those violations without complying with the conditions of the permit it received. Unless enjoined, it may violate NPDES permits that it is issued in the future with regard to the operation of Trump Tower.

106. Defendant’s previous Answer and Affirmative Defenses to Plaintiff-Intervenors’ Complaint relied on accurate reporting in their DMRs. With faulty reporting, Defendants’ Answer resting on compliance with DMR requirements is illegitimate.

107. Each day in which Trump International has discharged while in violation of the reporting and monitoring requirements of its 2013 NPDES Permit, the CWA, or state or federal

regulations promulgated thereunder constitutes a violation of Section 301 of the CWA, 33 U.S.C. § 1311 and is actionable under Section 505 of the CWA, 33 U.S.C. § 1365(a)(1).

108. By failing to correctly convert GPM to MGD in its DMRs, Trump International has underreported its flow rates, thus, misrepresented the impact of its facility on the Chicago River ecosystem and surrounding environment.

109. Pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1319 and 1365, and 40 C.F.R. §§ 19.1–19.4, Trump International is liable for injunctive relief and civil penalties of up to \$37,500 per day for each of violations occurring from January 12, 2009 through November 2, 2015 and up to \$64,618 per day for each of violations occurring after November 2, 2015. 33 U.S.C. §§ 1311, 1365; 40 C.F.R. §§ 19.1–19.4.

**Wherefore,** Plaintiff-Intervenors pray for judgment as follows:

- A. Issue a permanent injunction preventing the Defendant from committing any further violations of the CWA, 33 U.S.C. § 1251 et seq., and the 2013 NPDES Permit;
- B. Order the Defendant to complete expeditiously all actions necessary to ensure that Defendant complies with all applicable requirements of the CWA;
- C. Order the Defendant to pay a civil penalty to the United States of up to \$37,500 per day for each violation occurring from January 12, 2009 through November 2, 2015 and up to \$64,618 per day for each violation occurring after November 2, 2015;
- D. Award Plaintiff-Intervenors their costs and attorneys' fees, pursuant to Section 505(d) of the CWA, 33 U.S.C. § 1365(d);
- E. Permanently enjoin the Defendant from operating its facility so as to create a public nuisance; and

F. Grant such other relief as the Court may deem appropriate.

DATED this 27<sup>th</sup> of September, 2023.

SIERRA CLUB and FRIENDS OF CHICAGO RIVER,

/s/ Albert Ettinger

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