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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 10 2004

ORIGINAL

STATE OF ILLINOIS  
Pollution Control Board

<p>PEOPLE OF THE STATE OF ILLINOIS,</p> <p>Complainant,</p> <p>v.</p> <p>MARC REALTY, INC., an Illinois corporation, 11 EAST ADAMS L.L.C., an Illinois limited liability company, and ROBERTS ENVIRONMENTAL CONTROL, INC., an Illinois corporation,</p> <p>Respondents.</p>	<p>PCB No. 04-100</p> <p>(Enforcement - Air)</p>
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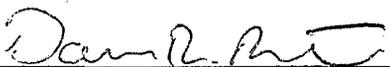
NOTICE OF FILING

To: Bradley Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph St.-11th Flr.  
Chicago, Illinois 60601

Christopher P. Perzan, Esq.  
Office of the Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Flr.  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Roberts Environmental Control Corp.'s Answer and Affirmative Defenses to Complaint, a copy of which is herewith served upon you.

ROBERTS ENVIRONMENTAL CONTROL CORP.

By: 

Edward L. Filer, Esq.  
Darren R. Bertram, Esq.  
FagelHaber LLC  
55 East Monroe St.-40th Flr.  
Chicago, Illinois 60603  
Phone: 312 346-7500  
Attorney No. 90041

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STATE OF ILLINOIS  
Pollution Control Board

~~ORIGINAL~~  
PROOF OF SERVICE BY MAIL

I, Sherry Follmer, a non-attorney, certify that I served Roberts Environmental Control Corp.'s Answer and Affirmative Defenses to Complaint by mailing a copy thereof to the above named parties at their address, by depositing the same in the U.S. mail at 55 East Monroe Street, Chicago, Illinois before 5:00 p.m. on the 10th day of September, 2004, with proper postage affixed thereto.

Sherry Follmer

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

MARC REALTY, INC., an Illinois corporation, 11 EAST ADAMS L.L.C., an Illinois limited liability company, and ROBERTS ENVIRONMENTAL CONTROL, INC., an Illinois corporation,

Respondents.

PCB No. 04-100

(Enforcement – Air)

**ROBERTS ENVIRONMENTAL CONTROL CORP.'S  
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

Respondent, Roberts Environmental Control Corp. (“Roberts”), improperly named as Roberts Environmental Control, Inc., by and through its attorneys, FagelHaber LLC, and in Answer to the Complaint of Complainant, People of the State of Illinois, states as follows:

**COUNT I  
AIR POLLUTION**

1. This Complaint is brought by the Attorney General against Marc Realty, Inc. and Roberts Environmental Control, Inc., on her own motion and upon the request of the Illinois Environmental Protection Agency (“Illinois EPA”) and against 11 East Adams, L.L.C. on her own motion, pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2002).

**Answer:** Roberts admits that this is an action brought by the Attorney General, but lacks sufficient information to form a belief as to the truth or falsity as to whether this matter was brought upon the request of the Illinois EPA, and therefore neither admits nor denies same, but demands strict proof thereof. Answering further, Roberts objects to the remaining allegations contained in Paragraph 1 as they require legal conclusions and therefore no answer is required.

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 (2002), and charged, inter alia, with the duty of enforcing the Act.

**Answer:** Roberts objects to the allegations contained in Paragraph 2 as they require legal conclusions and therefore no answer is required.

3. Respondent, Marc Realty, Inc. ("Marc Realty"), is an Illinois corporation and is headquartered at 200 W. Jackson St., Chicago, Illinois 60606.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the allegations contained in Paragraph 3, and therefore neither admits nor denies same, but demands strict proof thereof.

4. Respondent, 11 East Adams, L.L.C., is an Illinois Limited Liability Company.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the allegations contained in Paragraph 4, and therefore neither admits nor denies same, but demands strict proof thereof.

5. Respondent, Roberts Environmental Control, Inc. ("Roberts"), is an Illinois corporation and is headquartered at 7410 Duvan Drive, Tinley Park, Illinois 60477.

**Answer:** Roberts admits that it is an Illinois corporation that has offices at 7410 Duvan Drive, Tinley Park, Illinois, but states that its proper name is Roberts Environmental Control Corp. Roberts denies that remaining allegations contained in Paragraph 5.

6. Marc Realty is the operator and manager of a sixteen floor office building located at 11 E. Adams Street, Chicago, Cook County, Illinois ("Adams Street building"). Marc Realty manages the property and leases space within it to various tenants for use as office space. The majority of the building was occupied by tenants at all times relevant to this complaint.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the allegations contained in Paragraph 6, and therefore neither admits nor denies same, but demands strict proof thereof.

7. 11 East Adams, L.L.C., is the owner of the Adams Street Building.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the allegations contained in Paragraph 7, and therefore neither admits nor denies same, but demands strict proof thereof.

8. During the month of August, 2002, Marc Realty was engaged in the renovation of the fourth floor of the Adams Street building.

**Answer:** Admitted.

9. Marc Realty contracted with an/or arranged for Roberts to install a heating, ventilation and air conditioning system ("HVAC system") on the fourth floor as part of the renovation.

**Answer:** Roberts admits the it entered into a contract with Marc Realty relating to the heating and ventilation and air conditioning system at 11 E. Adams Street, Chicago, Cook County, Illinois, but the contract speaks for itself. Roberts denies all remaining allegations contained in Paragraph 9.

10. In the course of installing the HVAC system, Roberts removed or disturbed materials located in and around the ceiling that contained between 35% and 40% chrysotile asbestos.

**Answer:** Denied.

11. The Respondents' removal and/or disturbance of the materials containing asbestos caused emissions of asbestos fibers.

**Answer:** Denied.

12. An Illinois EPA inspection and sampling on August 7, 2002 determined that materials containing asbestos were disturbed on the fourth floor of the Adams Street Building and also dispersed into the elevator and the first floor of the Adams Street Building.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the allegations contained in Paragraph 12, and therefore neither admits nor denies same, but demands strict proof thereof.

13. Section 9(2) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

No person shall:

- a. Cause, threaten or allow the discharge or emission of any contaminant into the environment of any state so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

**Answer:** Roberts objects to the allegations contained in Paragraph 13 as they require legal conclusions and therefore no answer is required.

14. Section 3.315 of the Act, 415 ILCS 5/3, 315 (2002), provides the following definition:

"PERSON" is 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.

**Answer:** Roberts objects to the allegations contained in Paragraph 14 as they require legal conclusions and therefore no answer is required.

15. Marc Realty is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 15 as they require legal conclusions and therefore no answer is required.

16. Roberts is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 16 as they require legal conclusions and therefore no answer is required.

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

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

**Answer:** Roberts objects to the allegations contained in Paragraph 17 as they require legal conclusions and therefore no answer is required.

18. Section 201.102 of the Illinois Pollution Control Board Air Pollution Regulations ("Board regulations"), 35 Ill. Adm. Code 201.102, provides the following definition:

"Air Pollution": the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

**Answer:** Roberts objects to the allegations contained in Paragraph 18 as they require legal conclusions and therefore no answer is required.

19. Section 201.141 of the Board regulations, 35 Ill. Adm. Code 201.141, provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

**Answer:** Roberts objects to the allegations contained in Paragraph 19 as they require legal conclusions and therefore no answer is required.

20. Asbestos is a contaminant as defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 20 as they require legal conclusions and therefore no answer is required.

21. Asbestos is a known human carcinogen and can be injurious to human health when inhaled.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the allegations contained in Paragraph 21, and therefore neither admits nor denies same, but demands strict proof thereof.

22. The emission of asbestos as alleged constituted air pollution.

**Answer:** Roberts specifically denies that it caused the emission of asbestos. Answering further, Roberts objects to the allegations contained in Paragraph 22 as they require legal conclusions and therefore no answer is required.

23. From at least August 7, 2002 until, when the abatement and cleanup was completed Respondents, by their actions as alleged herein, violated of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002) and 35 Ill. Adm. Code 201.141.

**Answer:** Roberts specifically denies that it caused the emission of asbestos. Answering further, Roberts objects to the allegations contained in Paragraph 23 as they require legal conclusions and therefore no answer is required.

WHEREFORE, Respondent, Roberts Environmental Control Corp., respectfully requests that this Honorable Court dismiss Count I of the Complainant's Complaint and grant judgment in favor of Roberts against the Complainant, People of the State of Illinois, for all costs associated with this action, and for any and all other and further relief that this Court deems just, equitable and proper.

COUNT II  
FAILURE TO COMPLY WITH  
NATIONAL EMISSIONS STANDARDS FOR  
HAZARDOUS AIR POLLUTANTS

1-19. Respondent incorporates by reference paragraphs 1 through 12, 14 through 18, and 20 through 21 of Count I as paragraphs 1 through 19 of Count II as if fully set forth herein.

**Answer:** Roberts incorporates by reference its answers to Paragraphs 1 through 12, 14 through 18, and 20 through 21 of Count I, as its answers to Paragraphs 1 through 19 of Count II as if fully set forth herein.

20. Section 9.1 of the Act, 415 ILCS 5/9.1 (2002), provides in pertinent part, as follows:

- (b) The provisions of Section 111 of the federal Clean Air act (42 USC 7411), as amended, relating to standards of performance for new stationary sources, and Section 112 of the federal Clean Air Act (42 USC 7412), as amended, relating to the establishment of national emission standards for hazardous air pollutants are applicable in this State and are enforceable under this Act.

\* \* \*

- (d) No person shall:
- (1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or the federal regulations adopted pursuant thereto;

**Answer:** Roberts objects to the allegations contained in Paragraph 20 as they require legal conclusions and therefore no answer is required.

21. Subpart M of Part 61, Title 40 of the Code of Federal Regulations (“C.F.R.”) was adopted pursuant to the Section 112 of the Clean Air Act as part of the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) and promulgated the National Emission Standard for Asbestos and is enforceable in the State of Illinois pursuant to Section 9.1 of the Act, 415 ILCS 5/9.1 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 21 as they require legal conclusions and therefore no answer is required.

22. 40 C.F.R. § 61.141 (2002) provides the following pertinent definitions:

Asbestos means the asbestiform varieties of serpentinite (chrysotile), reibeckite (crocidolite), cummingtonitegrunerite, anthophyllite, and actinolite-tremolite.

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-constraining material waste and maters.

Category I nonfriable asbestos containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products continuing (*sic*) than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I Nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos containing material (RACM) means (a) Friable asbestos containing material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to power by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Renovation means altering a facility or one or more facility components in any way, including stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

**Answer:** Roberts objects to the allegations contained in Paragraph 22 as they require legal conclusions and therefore no answer is required.

23. Respondents engaged in a renovation of the fourth floor as defined in 40 C.F.R. § 61.141 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 23 as they require legal conclusions and therefore no answer is required.

24. Respondent Marc Realty was an operator of a renovation activity as defined in 40 C.F.R. § 61.141 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 24 as they require legal conclusions and therefore no answer is required.

25. 11 East Adams, L.L.C. is the owner of a renovation activity as defined in 40 C.F.R. § 61.141 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 25 as they require legal conclusions and therefore no answer is required.

26. Respondent Roberts was an operator of a renovation activity as defined in 40 C.F.R. § 61.141 (2002).

**Answer:** Roberts objects to the allegations contained in Paragraph 26 as they require legal conclusions and therefore no answer is required.

27. Neither Roberts, 11 East Adams, L.L.C., nor Marc Realty was licensed to perform any asbestos abatement related activities pursuant to the Commercial and Public Building Asbestos Abatement Act, 225 ILCS 5-201/1, et seq, (2002).

**Answer:** Roberts admits that it is not licensed to perform asbestos related activities pursuant to the Commercial and Public Building Asbestos Abatement Act, 225 ILCS 5-201/1, et seq, (2002). Roberts lacks sufficient information to form a belief as to the truth or falsity as to the remaining allegations contained in Paragraph 27, and therefore neither admits nor denies same, but demands strict proof thereof.

28. The material disturbed during the renovation contained more than 1 per cent chrysotile asbestos.

**Answer:** Roberts specifically denies that it caused the emission of asbestos. Answering further, Roberts lacks sufficient information to form a belief as to the truth or falsity as to the remaining allegations contained in Paragraph 28, and therefore neither admits nor denies same, but demands strict proof thereof.

29. The material disturbed in the course of the renovation constituted RACM as defined in 40 C.F.R. § 61.141 (2002).

**Answer:** Roberts specifically denies that it caused the emission of asbestos. Answering further, Roberts objects to the allegations contained in Paragraph 29 as they require legal conclusions and therefore no answer is required.

30. The RACM removed during the renovation, as well as materials contaminated with asbestos through contact with RACM, constituted asbestos-containing waste materials ("ACWM") as defined in 40 C.F.R. § 61.141 (2002).

**Answer:** Roberts specifically denies that it caused the emission of asbestos. Answering further, Roberts objects to the allegations contained in Paragraph 30 as they require legal conclusions and therefore no answer is required.

31. 40 C.F.R. § 61.145 (2002) provides as follows:

(a) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

\* \* \*

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

- (i) At least 80 linear meters (260 linear feet) on pipes or a (sic) least 15 square meters (160 square feet) on other facility components, or
- (ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measure (sic) previously.

(b) Notification requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

\* \* \*

- (3) Postmark or deliver the notice as follows:
- (i) At least 10 working days before asbestos striping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a) (4) (iii) and (a) (4) (iv) of this section.
- (c) Procedures for asbestos emission control. Each owner or operator of a demolition activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:
- (1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

\* \* \*

- (6) For all RACM, including material that has been removed or stripped:
- (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and
  - (ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding or otherwise damaging or disturbing the material.

\* \* \*

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulations by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present.

\* \* \*

**Answer:** Roberts objects to the allegations contained in Paragraph 31 as they require legal conclusions and therefore no answer is required.

32. 40 C.F.R. § 61.150(b) (2002) provides, in pertinent part, as follows:

\* \* \*

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154;

**Answer:** Roberts objects to the allegations contained in Paragraph 32 as they require legal conclusions and therefore no answer is required.

33. The amount of RACM disturbed, dislodged or removed during the renovation exceeded 160 square feet, 260 linear feet or 35 cubic feet.

**Answer:** Roberts lacks sufficient information to form a belief as to the truth or falsity as to the remaining allegations contained in Paragraph 33, and therefore neither admits nor denies same, but demands strict proof thereof.

34. The Respondents failed to thoroughly inspect facility for the presence of asbestos and failed to the [sic] make the notification required by 40 C.F.R. § 61.145(a) and (b).

**Answer:** Roberts denies that it failed to inspect the facility for the presence of asbestos. Roberts lacks sufficient information as to the truth of falsity of the inspection conducted by the remaining Respondents, and therefore neither admits nor denies same, but demands strict proof thereof. Roberts objects to the remaining allegations contained in Paragraph 34 as they require legal conclusions and therefore no answer is required.

34. [sic] The Respondents failed to remove all RACM from the area of the Adams Street building in which the renovation was planned although the renovation activities would break up, dislodge or disturb the material, in violation of 40 C.F.R. § 61.145(c)(1) (2002).

**Answer:** Roberts denies the allegations contained in Paragraph 34 to the extent they are directed at Roberts. Roberts lacks sufficient information as to the truth of falsity of the remaining Respondents activities, and therefore neither admits nor denies same, but demands strict proof

thereof. Roberts objects to the remaining allegations contained in Paragraph 34 as they require legal conclusions and therefore no answer is required.

35. The Respondents failed to avoid disturbing the RACM, failed to adequately wet the RACM and failed to ensure that the RACM remained wet until collected and contained for disposal in violation of 40 C.F.R. § 61.145(c)(6) (2002).

**Answer:** Roberts denies the allegations contained in Paragraph 35 to the extent they are directed at Roberts. Roberts lacks sufficient information as to the truth or falsity of the remaining Respondents activities, and therefore neither admits nor denies same, but demands strict proof thereof. Roberts objects to the remaining allegations contained in Paragraph 35 as they require legal conclusions and therefore no answer is required.

36. The Respondents failed to provide for the on-site presence of a representative trained in the provisions of the asbestos NESHAP regulations in violation of 40 C.F.R. § 61.145(c)(8) (2002).

**Answer:** Roberts denies the allegations contained in Paragraph 36 to the extent they are directed at Roberts. Roberts lacks sufficient information as to the truth or falsity of the remaining Respondents activities, and therefore neither admits nor denies same, but demands strict proof thereof. Roberts objects to the remaining allegations contained in Paragraph 34 as they require legal conclusions and therefore no answer is required.

37. The Respondents failed to deposit the RACM generated by the renovation at an appropriate waste disposal site in a timely manner in violation of 40 C.F.R. § 61.150(b)(1) (2002).

**Answer:** Roberts denies the allegations contained in Paragraph 37 to the extent they are directed at Roberts. Roberts lacks sufficient information as to the truth or falsity of the remaining Respondents activities, and therefore neither admits nor denies same, but demands strict proof thereof. Roberts objects to the remaining allegations contained in Paragraph 37 as they require legal conclusions and therefore no answer is required.

38. Each violation of the provisions of Part 61, Subpart M, of Title 40 of the C.F.R. cited above constitutes a violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002)

Answer: Roberts objects to the allegations contained in Paragraph 38 as they require legal conclusions and therefore no answer is required.

WHEREFORE, Respondent, Roberts Environmental Control Corp., respectfully requests that this Honorable Court dismiss Count I of the Complainant's Complaint and grant judgment in favor of Roberts against the Complainant, People of the State of Illinois, for all costs associated with this action, and for any and all other and further relief that this Court deems just, equitable and proper.

#### **AFFIRMATIVE DEFENSES**

NOW COMES the Respondent, Roberts Environmental Control Corp. ("Roberts"), improperly named as Roberts Environmental Control, Inc., by and through its attorneys, FagelHaber LLC, and pleading in the alternative and without prejudice to its general denial of liability set forth in its Answer to the Complainant, People of the State of Illinois's Complaint, states as its Affirmative Defenses to the Complaint, the following:

#### **First Affirmative Defense**

1. Roberts contracted with Marc Realty, Inc. ("Marc Realty") to perform certain heating, air conditioning and ventilation work at 11 E. Adams Street, Chicago, Cook County, Illinois (the "Property").

2. At all times Roberts complied with the asbestos abatement contractor at the Property. Indeed, Roberts' employees wore breathing apparatus, worked within protected spaces with a negative air pressure machine operating.

3. Roberts did not disturb any asbestos covered material.

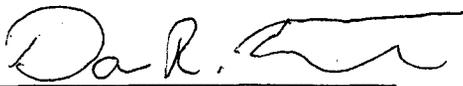
4. Roberts did not remove any material from the Property.

5. Claimant improperly seeks recovery against Roberts for violations that were caused in whole or in part by the acts or omissions of others, including the other Respondents in this matter and the abatement contractor, for which Roberts had no responsibility.

WHEREFORE, Respondent, Roberts Environmental Control Corp., respectfully requests that this Honorable Court dismiss the Complainant's Complaint and grant judgment in its favor against the Plaintiff, People of the State of Illinois, for all fees and costs associated with this action, and for any and all other and further relief that this Court deems just, equitable and proper.

Respectfully submitted,

**ROBERTS ENVIRONMENTAL  
CONTROL, INC.**

By:   
One of its Attorneys

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Darren R. Bertram, Esq.  
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