

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 29 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)

Complainant,)

v.)

PCB 04-100
(Enforcement-Air)

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,)

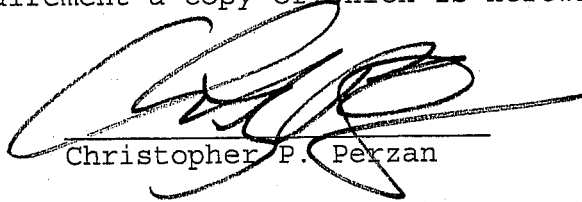
Respondents.)

NOTICE OF FILING

TO:

Edward L. Filer
Darren R. Bertram
FagelHaber LLC
55 East Monroe, 40th Floor
Chicago, Illinois 60603

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Stipulation and Proposal for Settlement with Respondent Roberts Environmental Control, Inc., and Motion for Relief from Hearing Requirement a copy of which is herewith served upon you.



Christopher P. Perzan

Dated: April 29, 2005

Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, Illinois 60601
312 814-3532

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Respondents.)

STIPULATION AND PROPOSAL FOR SETTLEMENT WITH
RESPONDENT ROBERTS ENVIRONMENTAL CONTROL, INC.

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, ROBERTS ENVIRONMENTAL CONTROL, INC. ("Settling Respondent" or "ROBERTS"), do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose in this, or any other proceeding, except to enforce the terms hereof, by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement, and any Illinois Pollution Control Board ("Board") order accepting same, may be used as evidence of a past adjudicated violation of the Act as

alleged herein, pursuant to Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002), in determining appropriate civil penalties for any future violations of the Act. This Stipulation may also be used in any permitting action for the purposes of Section 39(i) of the Act, 415 ILCS 5/39(i) (2002). This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2002).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to, and

be binding upon, the Complainant and Settling Respondent, and any officer, agent, employee or servant of Settling Respondent, as well as the Settling Respondent's successors and assigns. Settling Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement. The terms of this Stipulation and Proposal for Settlement and the release contained herein are applicable only to the signatories of this Stipulation and Proposal for Settlement.

IV.

STATEMENT OF FACTS

1. 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 is charged, *inter alia*, with the duty of enforcing the Act.

2. Settling Respondent was installing a heating ventilation and air conditioning system at a building located at 11 East Adams Street, Chicago, Cook County, Illinois ("facility") in August 2002. The facility was operated and owned by Marc Realty, Inc. and 11 East Adams, LLC.

3. On August 7, 2002, the Illinois EPA conducted an inspection to determine compliance with regulations applicable to the management of asbestos during renovation activities. Some of the other floors of the building were occupied by tenants at the time of the renovation.

4. The Illinois EPA observed the presence of possible asbestos containing materials on the ceiling in the form of spray-on fireproofing on the fourth floor during the inspection. Disturbed asbestos containing materials were also observed on the floor. Samples taken by the Illinois EPA during the inspection established the presence of asbestos. The Illinois EPA determined the existence of violations of provisions of the Environmental Protection Act and the National Emissions Standards for Hazardous Air Pollutants.

5. ROBERTS was present on the fourth floor at the time of the inspection installing a heating, ventilation and air conditioning system.

6. After the inspection, Marc Realty, Inc. and 11 East Adams, LLC provided for the asbestos abatement of the fourth floor before renovation work recommenced and performed asbestos cleaning activities on other floors of the facility.

7. On, May 25, 2004 the Complainant and respondents Marc Realty, Inc. and 11 East Adams, L.L.C. filed a Stipulation and Proposal for Settlement in this case. The Board issued an order accepting the Stipulation and Proposal for Settlement on July 22, 2004. That settlement resolved the liability of Marc Realty and 11 East Adams LLC, but did not address the liability of co-respondent ROBERTS.

V.

VIOLATIONS

The Complaint alleges the following violations:

Count I: AIR POLLUTION; Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 201.141. Respondents caused, threatened or allowed air pollution in the State of Illinois.

Count II: FAILURE TO COMPLY WITH NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS; Violation of Section 9.1(d) of the Act and 40 C.F.R. § 61.145(a), (b), (c) (1), (6) & (8) (2002); and, 40 C.F.R. § 61.150(b) (2002).

VI.

NATURE OF RESPONDENTS' OPERATIONS

Settling Respondent conducts a heating, ventilation and air conditioning contracting business.

VII.

EXPLANATION OF PAST FAILURES TO COMPLY

1. On September 13, 2002, the Illinois EPA issued a violation notice to Respondents MARC REALTY, INC. and ROBERTS advising them of violations observed at the facility during the inspection. The alleged violations included the failure to notify the Illinois EPA of a regulated renovation activity, failure to sufficiently remove asbestos prior to conducting the renovation activity, failure to keep asbestos containing materials wet, failure to provide properly trained personnel, failure to timely dispose of asbestos containing waste material and causing, threatening or allowing air pollution. The alleged violations included violations of provisions of the

Environmental Protection Act and the National Emissions Standards for Hazardous Air Pollutants.

2. 11 EAST ADAMS, L.L.C. submitted a response to the violation notice on October 31, 2002. In its response, 11 EAST ADAMS, L.L.C. expressed regret over the incident and asserted that the contractor and its employees that caused the release were experienced in handling asbestos and were aware of its presence. The Illinois EPA issued a rejection of a compliance commitment agreement to 11 EAST ADAMS, L.L.C. by letter of November 15, 2002. ROBERTS did not respond to the violation notice.

3. On November 13, 2003, the Illinois EPA issued a notice of intent to pursue legal action against both MARC REALTY, INC. and ROBERTS.

VIII.

FUTURE PLANS OF COMPLIANCE

Settling Respondent shall comply with all requirements of the Act, 415 ILCS 5/1 *et seq.* (2002), and the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges,

or deposits, involved including, but not limited to:

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

In response to these factors, the parties state as follows:

1. The impact to the public resulting from Respondent's noncompliance was that mismanagement of asbestos can also result in the public being exposed to levels of airborne asbestos that may threaten human health.

2. The facility that is the subject of the Complaint has social and economic value.

3. The facility that is the subject of the Complaint is suitable to the area in which it is located.

4. Complying with the requirements of the Act and the Board Regulations is both technically practicable and economically reasonable.

5. The facility was brought into compliance by abatement of the asbestos prior to recommencing renovation activities and cleaning

other areas of the facility.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (3), or (b) (5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent.
6. whether the respondent voluntarily

self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;

7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. Complainant contends that the violations that are the subject of the Complaint occurred over the period of at least one week.
2. Complainant contends that the Settling Respondent was not diligent in disturbing asbestos materials during the installation of heating, ventilation and air conditioning equipment.
3. The Settling Respondent derived no material economic benefit from the violations. The penalty of \$7,500.00 is greater than any economic benefit arising from the violations.
4. The settling parties believe that a civil penalty of \$7,500.00 will deter Settling Respondent from committing further violations, and will aid in enhancing voluntary compliance by Settling Respondent and others similarly subject to the Act.
5. The State is not aware of any other adjudicated violations of the Act by Settling Respondent.
6. Settling Respondent did not meet the requirements of Section 42(h)(6) of the Act, 415 ILCS 5/42(h)(6)(2002).
7. Respondent is not performing a Supplemental Environmental

Project pursuant to Section 42(h) (7) of the Act, 415 ILCS
5/42(h) (7) (2002).

XI.

TERMS OF SETTLEMENT

1. The Settling Respondent represents that it has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Settling Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

2. Settling Respondent shall pay a civil penalty of \$7,500.00 into the Environmental Protection Trust Fund within thirty (30) days after the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

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

A copy of the check shall be sent to:

Christopher P. Perzan
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor

Chicago, IL 60601

Settling Respondent shall write the case caption and number, and its Federal Employer Identification Number ("FEIN") 36-274779, upon the certified check or money order.

3. For purposes of payment and collection, the Settling Respondent may be reached at the following address:

James Wasniewski
7410 Duvan Drive
Tinley Park, Illinois 60477

4. Pursuant to Section 42(g) of the Act, 415 ILCS 4/42(g) (2002), interest shall accrue on any amount not paid within the time period prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Complainant, shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI.2. herein.

5. Settling Respondent shall cease and desist from future violations of the Act and Board Regulations, including but not limited

to those sections of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section V of this Stipulation and Proposal for Settlement.

XII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the Settling Respondent's responsibility to comply with any federal, state or local laws and regulations.

XIII.

RELEASE FROM LIABILITY

In consideration of the Respondents' payment of a \$7,500.00 civil penalty and its commitment to refrain from further violations of the Act and the Board Regulations, upon receipt by Complainant of the payment required by Section XI of this Stipulation, the Complainant releases, waives and discharges Settling Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties for violations which were the subject matter of the Complaint herein. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

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WHEREFORE, Complainant and Settling Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

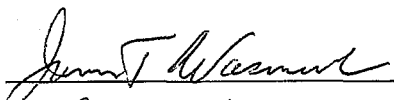
FOR THE COMPLAINANT:

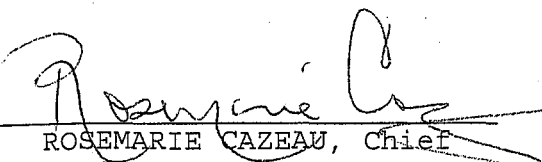
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

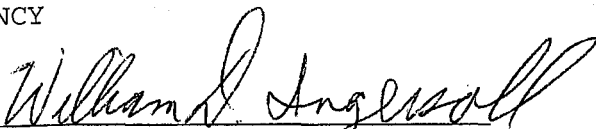
FOR THE SETTLING RESPONDENTS:

ROBERTS ENVIRONMENTAL CONTROL,
INC.

By: 
Its: President

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General
Dated: 3/2/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
WILLIAM D. INGERSOLL
Acting Chief Legal Counsel
Division of Legal Counsel

Dated: Feb. 24, 2005

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 corporation, 11 EAST ADAMS, L.L.C.,)
 an Illinois Limited Liability)
 Company, and ROBERTS ENVIRONMENTAL)
 CONTROL, INC., an Illinois)
 corporation,)
)
 Respondents.)

PCB 04-100
(Enforcement-Air)

MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On December 22, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. Simultaneously with this Motion, the Complainant and Respondents ROBERTS ENVIRONMENTAL CONTROL, INC., ("Settling Respondent") are filing a Stipulation and Proposal for Settlement with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), (2002) allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the

Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

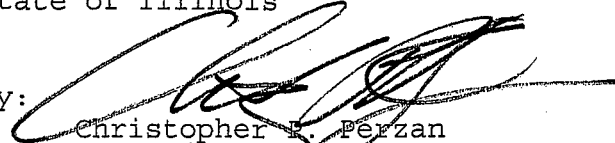
WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General of the
State of Illinois

By:



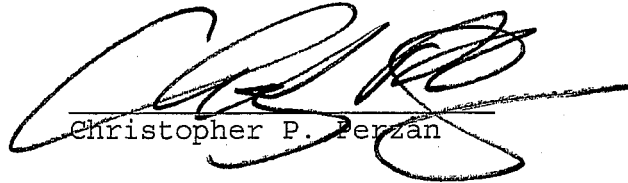
Christopher P. Perzan
Assistant Attorney General

Office of the Attorney General
Environmental Bureau
188 West Randolph Street, 20th Fl.
Chicago, IL 60601
312/814-3532

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Stipulation and Proposal for Settlement with Respondents Roberts Environmental Control, Inc., and Motion for Relief from Hearing Requirement, by depositing the same in the United States Mail, postage fully prepaid, upon the following persons:

Edward L. Filer
Darren R. Bertram
FagelHaber LLC
55 East Monroe, 40th Floor
Chicago, Illinois 60603



Christopher P. Perzan

Date: April 29, 2005