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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE 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: See Attached Service List

PLEASE TAKE NOTICE that on December 22, 2003, we filed with the Illinois Pollution Control Board a Complaint, a true and correct copy of which is attached and hereby served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

Financing to correct the violations alleged may be available through the Illinois Environmental Facilities Financing Act 20 ILCS 3515/1, *et seq.*

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY: _____

Christopher P. Berzan
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-3532

SERVICE LIST

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Marc Realty, Inc.
c/o Registered Agent
Allen B. Glass
200 W. Jackson, #1200
Chicago, Illinois 60606

11 East Adams, LLC
200 W. Jackson, #1200
Chicago, Illinois 60606

Mr. Michael J. Quinn
Seyfarth Shaw
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603

Roberts Environmental Control, Inc.
c/o James T. Wasniewski, Reg. Agent
7410 Duvan Drive
Tinley Park, Illinois 60477

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Respondents.	)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, MARC REALTY, INC., 11 EAST ADAMS, L.L.C., and ROBERTS ENVIRONMENTAL CONTROL, INC., 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).

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.

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

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

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

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.

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

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

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

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.

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

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.

13. Section 9(a) 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;

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.

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

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

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.

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.

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.

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

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

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

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.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,

respectfully requests that the Board enter an order for Complainant and against Respondents with respect to this Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations alleged herein;

2. Finding that Respondents wilfully, knowingly and repeatedly violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and 35 Ill. Adm. Code 201.141;

3. Ordering Respondents to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), 35 Ill. Adm. Code 201.141;

4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars ($50,000.00) for each violation of the Act, and regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each and every day of violation;

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

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

COUNT II

FAILURE TO COMPLY WITH NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. - 19. Complainant realleges and incorporates by reference

herein paragraphs 1 through 12, 14 through 18, and 20 through 21 of Count I as paragraphs 1 through 19 of Count II.

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;

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).

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 materials

Category I nonfriable asbestos containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products continuing more 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 powder 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.

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

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

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

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

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).

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

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

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).

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 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 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.

* * *

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;

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

34. The Respondents failed to thoroughly inspect facility for the presence of asbestos and failed to the make the notification required by 40 C.F.R. § 61.145(b) (2002) in violation of 40 C.F.R. § 61.145(a) and (b).

34. 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).

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).

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).

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).

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).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order for Complainant and against Respondents with respect to this Count II:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations alleged herein;

2. Finding that Respondents wilfully, knowingly and repeatedly violated 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);

3. Ordering Respondent to cease and desist from further violations 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);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars ($50,000.00) for each violation of the Act, and regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each and every day of violation;

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

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

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General
State of Illinois

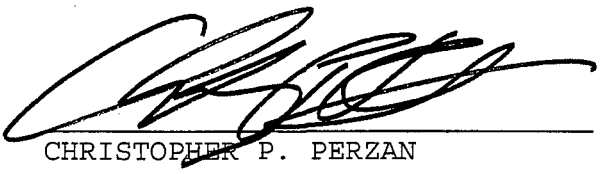
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:
CHRISTOPHER P. PERZAN
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601
(312) 814-3532

CERTIFICATE OF SERVICE

I, CHRISTOPHER P. PERZAN, an Assistant Attorney General, certify that on the 22nd day of December, 2003, I caused to be served by Registered Certified Mail, Return Receipt Requested, the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



CHRISTOPHER P. PERZAN

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