

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 27 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 PAUL DiFRANCO, SR., an Illinois )  
 resident, and MARK'S )  
 CONSTRUCTION, INC., an )  
 Illinois corporation, )  
 )  
 Respondents. )

PCB 05-13

(Enforcement - Air)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 27th day of May, 2005, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: Stephen J. Sylvester  
 STEPHEN J. SYLVESTER  
 Assistant Attorney General  
 Environmental Bureau North  
 188 West Randolph St., 20<sup>th</sup> Floor  
 Chicago, Illinois 60601  
 312-814-2087

DATE: May 27, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Joseph R. Podlewski  
Schwartz, Cooper, Greenberger & Krauss, Chtd.  
180 North LaSalle  
Suite 2700  
Chicago, Illinois 60601

Mr. Bradley Halloran  
Chief Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, 11th Floor  
Chicago, IL 60601

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**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 July 29, 2004 a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On May 27, 2005, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), effective August 1, 1996, 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.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2002), provides as follows:

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).

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

5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2002).

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: \_\_\_\_\_

STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA  
 MADIGAN, Attorney General of the State of Illinois, the Illinois  
 Environmental Protection Agency ("Illinois EPA"), and  
 Respondents PAUL DiFRANCO, SR. ("DiFranco"), an Illinois  
 resident, and MARK'S CONSTRUCTION, INC. ("MCI"), an Illinois  
 corporation, (collectively, "Respondents"), have agreed to the  
 making of this Stipulation and Proposal for Settlement  
 ("Stipulation") and submit it to the Illinois Pollution Control  
 Board ("Board") for approval. The parties agree that the  
 statement of facts contained herein represents a fair summary of

the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondents agree to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

#### I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("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 to legally bind them to it.

### III. STATEMENT OF FACTS

#### A. Parties

1. On July 29, 2004 a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondents.

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).

3. At all times relevant to the Complaint, Respondent, DiFranco, was and is an Illinois resident, and Respondent, MCI was and is an Illinois corporation in good standing authorized to transact business in the State of Illinois.

#### B. Site Description

1. At all times relevant to the Complaint, Respondent, DiFranco was a beneficiary of an Illinois land trust holding record title to property commonly known as 911 West Busse Avenue, Park Ridge, Cook County, Illinois ("Site"). At all times relevant to the Complaint, the Site was improved with a one-story commercial building ("Building").



2. At all times relevant to the Complaint, Respondent, MCI conducted certain renovation activities at the Building for DiFranco.

**C. Allegations of Non-Compliance**

1. On October 25, 2002, an Illinois EPA inspector inspected the Building. On this date, he observed that floor tile suspected of containing asbestos had been disturbed with a scraper.

2. On October 26, 2002, the Illinois EPA collected five bulk samples of suspect floor tile from the Building for microscopic analysis. All of the samples of suspect floor tile collected this date tested positive for over 2% chrysotile asbestos.

3. Based upon the Illinois EPA's inspection and the results of the microscopic analysis of floor tile samples collected from the Building, Complainant contends that the Respondents have violated the following provisions of the Act, Board air pollution control regulations (35 Ill. Adm. Code Subtitle B, Chapter I) and the National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Part 61, Subpart M ("asbestos NESHAPs") in connection with the renovation activities at the Building:

- Count I: AIR POLLUTION, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 201.141.
- Count II: FAILURE TO PROVIDE NOTIFICATION OF DEMOLITION/RENOVATION ACTIVITIES, in violation of Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.145 (b) (1).
- Count III: FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES, in violation of Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.145 (c) (1).
- Count IV: FAILURE TO ADEQUATELY WET ALL RACM, in violation of Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.145 (c) (6).
- Count V: FAILURE TO FOLLOW PROPER DISPOSAL PROCEDURES, in violation of Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.150 (b).

**D. Admission of Violations**

The Respondents neither admit nor deny the violations alleged in the Complaint filed in this matter and referenced herein.

**E. Compliance Activities to Date**

Following an inspection of the Building by a representative of the Illinois EPA on October 25, 2002, renovation activities were suspended by the Respondents pending the completion of an asbestos abatement. On November 21, 2002, Asbestos Control, Inc., an Illinois-licensed asbestos contractor, commenced an

asbestos abatement of the Site on behalf of the Respondents pursuant to an approved asbestos abatement and remediation plan. The asbestos abatement was completed on November 27, 2002.

#### **IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

#### **V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

#### **VI. 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 question 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 the following:

1. The impact to the public resulting from Respondents' noncompliance was that the Illinois EPA and the public were not privy to information that is important to the control of air pollution in Illinois because no notification was received prior to the commencement of renovation activities at the Building. In addition, failure to adhere to the work practice standards of the asbestos NESHAPs in connection with regulated building

renovation activities may result in the emission of asbestos fibers, a known carcinogen.

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

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

4. Complying with the applicable provisions of the Act, the Board's air pollution control regulations and the asbestos NESHAPs is both technically practicable and economically reasonable.

5. Respondents have ultimately achieved compliance by abating the asbestos prior to recommencing renovation activities at the Site.

#### VII. 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 . . . 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 respondents in attempting to comply with requirements of this Act and regulations

thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the respondents 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 respondents and to otherwise aid in enhancing voluntary compliance with this Act by the respondents and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondents;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondents have agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that respondents agree to undertake in settlement of an enforcement action brought under this Act, but which the respondents are 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 a period of several weeks, which includes the period of time when the asbestos containing materials were initially disturbed up until the time that the Site was fully remediated. Respondents contend that

the duration of the alleged violations was no more than two days because renovation activities began at the Building the day prior to the Illinois EPA's October 25, 2002 inspection and were voluntarily suspended by the Respondents the next day. Renovation activities at the Building did not resume until after asbestos abatement activities were completed.

2. Complainant contends that the Respondents were not diligent in initially failing to provide for an adequate asbestos abatement prior to conducting renovation activities at the Site. Subsequent to the Illinois EPA's inspection on October 25, 2002, the Respondents took appropriate actions to abate the asbestos at the Site.

3. Respondents' economic benefit from noncompliance was nominal, and the penalty obtained includes any economic benefit received.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-Two Thousand Dollars (\$22,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Respondents did not meet the requirements of Section 42(h)(6) of the Act, 415 ILCS 5/42(h)(6) (2002).

7. The Respondents are not performing a supplemental environmental project pursuant to Section 42(h)(7) of the Act, 415 ILCS 5/42(h)(7) (2002).

#### VIII. TERMS OF SETTLEMENT

##### A. Penalty Payment

1. The Respondents shall jointly and severally pay a civil penalty in the sum of Twenty-Two Thousand Dollars (\$22,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section



1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case and MCI's Federal Employer Identification Number (FEIN), 36-4301461, shall appear on the check. If payment is being submitted by electronic funds transfer to the Illinois EPA, the electronic funds transfer shall be made in accordance with specific instructions to be timely provided to Respondents when the Board adopts and accepts this Stipulation. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Chris Pressnall  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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

from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondents may be reached at the following addresses:

Dr. Paul DiFranco, Sr.  
1835 Prairie  
Park Ridge, Illinois 60068

Mark's Construction, Inc.  
c/o Marek Kolbiarz  
414 Talcott  
Park Ridge, Illinois 60068

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and

conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondents hereby agree that this Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2002). Further, Respondents agree to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**C. Cease and Desist**

The Respondents shall cease and desist from future violations of the Act, Board air pollution control regulations and the asbestos NESHAPs that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

**D. Release from Liability**

In consideration of the Respondents' payment of the \$22,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and

Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act, Board air pollution control regulations and the asbestos NESHAPs that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on July 29, 2004. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or

cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

**E. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Building, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

**F. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

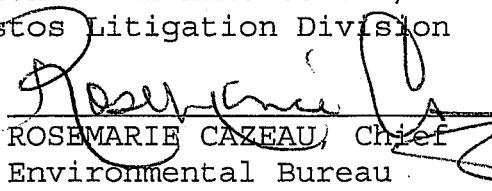
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WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

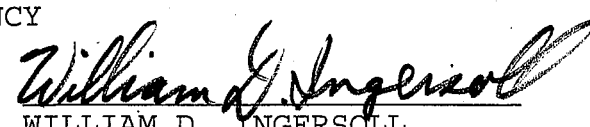
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General


DATE: 4/4/05

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:   
WILLIAM D. INGERSOLL  
Acting Chief Legal Counsel

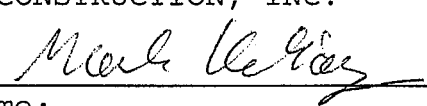
DATE: March 24, 2005

PAUL DIFRANCO, SR.



DATE: 4/28/05

MARK'S CONSTRUCTION, INC.

BY:   
Name: \_\_\_\_\_  
Title: President

DATE: 4-28-05

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 27th day of May, 2005, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
STEPHEN J. SYLVESTER