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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUL 29 2004

STATE OF ILLINOIS
Pollution Control Board

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

No. PCB 05-13
(Enforcement - Air)

NOTICE OF FILING

TO: Ms. Katrina M. Maglaya
Attorney for Respondents
Frank DiFranco & Assoc.
617 Devon Avenue
Park Ridge, Illinois 60068

Marek Kolbiarz
Registered Agent
Mark's Construction, Inc.
928 West Austin Avenue
Park Ridge, IL 60068

PLEASE TAKE NOTICE that we have today, August 29, 2004 filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of our Complaint, a copy of which is attached herewith and 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 proceedings. 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.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing A (20 ILCS 3515/1 et seq.) to correct the alleged pollution.

Respectfully submitted,

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

BY:

Katherine A. Kelly
KATHERINE A. KELLY
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
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(312) 814-3153

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COMPLAINT

Complainant, People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, PAUL DiFRANCO, SR., an Illinois resident, and MARK'S CONSTRUCTION, INC., an Illinois corporation, as follows:

COUNT I

AIR POLLUTION

1. This Complaint is brought 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 at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31 (2002) ("Act").

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the

duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent, Paul DiFranco, Sr. ("owner") was and is the owner of the property and building located at 911 West Busse Avenue, Park Ridge, Cook County, Illinois ("Site"). The building is a two story commercial building, formerly a medical facility.

4. At all times relevant to this Complaint, Respondent, Mark's Construction, Inc., ("MCI") was the operator and supervisor of the renovation of the building at the Site.

5. Prior to the renovation, owner contacted Bay Environmental to conduct an asbestos inspection of the building. On September 25, 2002, Bay Environmental collected twenty-seven samples of floor tile from the building, the testing of which confirmed the presence of asbestos. Bay identified 1,000 linear feet of asbestos-containing thermal system insulation, 13,000 square feet of asbestos-containing mastic, and 24,000 square feet of asbestos-containing floor tile.

6. On October 25, 2002, an Illinois EPA inspector inspected the building. On this date, there were ten (10) rooms with dry, friable 9 X 9 floor tile that had been disturbed with a scraper, floor tile which is often asbestos-containing, and thus considered suspect material.

7. On October 26, 2002, the Illinois EPA collected five samples of dry, friable suspect floor tile from the Site. All of

the samples of suspect floor tile collected this date tested positive for 2% chrysotile asbestos.

8. On October 26, 2002, unlicensed workers were using spud bars to remove the asbestos-containing floor. The unlicensed workers used only common dust masks for protection. On this date, no evidence of emission control techniques such as containment, negative air, pressure machines and water were being used in the building.

9. On November 21, 2002, DiFranco's retained contractor commenced an asbestos abatement pursuant to an approved asbestos abatement and remediation plan, which was completed on November 27, 2002.

10. From at least October 25, 2002 to November 27, 2002, the amount of material present in the facility alleged in paragraph 5 was well over the 160 square feet/260 linear feet asbestos NESHAP threshold amounts thereby triggering the asbestos NESHAP notification and emission control procedures.

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

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant into the environment in 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;

12. Section 201.141 of the Board's Air Pollution 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.

13. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines air pollution as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more 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.

14. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines contaminant as follows:

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

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person as follows:

"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.

16. Respondents are "persons" as that term is defined in

Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

17. Asbestos is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

18. On or about October of 2002, or dates better known to Respondents, and continuing until November 27, 2002, Respondents caused or allowed a release of asbestos fibers during renovation activities at the Site.

19. As the owner of the Site in which the renovation activity was taking place, the Respondent, Paul DiFranco Sr., caused, threatened or allowed the discharge or emission of asbestos into the environment so as to cause or tend to cause air pollution, in that dry, friable asbestos fibers were released into the atmosphere during the renovation activities at the Site.

20. As the party that conducted or supervised the renovation activities at the Site, the Respondent, MCI, caused, threatened or allowed the discharge or emission of asbestos into the environment so as to cause or tend to cause air pollution, in that dry, friable asbestos fibers were released into the atmosphere during renovation activities at the Site.

21. By their actions alleged herein, Respondents have caused or allowed air pollution in Illinois in violation 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 against Respondents, PAUL DiFRANCO, SR., and MARK'S CONSTRUCTION, INC. on this Count I:

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

2. Finding that Respondents have caused or allowed violations of Section 9 (a) of the Act and 35 Ill. Adm. Code 201.141;

3. Ordering the Respondents to cease and desist from any further violations of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141;

4. Assessing a civil penalty of \$50,000 against each Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000 per day for each day that the violations continued;

5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondents; and

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

COUNT II

FAILURE TO PROVIDE NOTIFICATION OF DEMOLITION/RENOVATION ACTIVITIES

1-15. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 10 and 13 through 17 of Count I as paragraphs 1 through 15 of this Count II.

16. Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), provides as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165, 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

17. Pursuant to Section 112 (b) (1) of the Clean Air Act ("CAA"), 42 USC 7412 (b) (1), the Administrator of the United States Environmental Protection Agency ("USEPA") has listed asbestos as a hazardous air pollutant.

18. Section 112 (d) of the CAA, 42 USC 7412 (d), titled, Emission Standards, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation
. . . .

19. Section 112 (h) of the CAA, 42 USC 7412 (h), titled, Work Practice Standards and Other Requirements, provides in pertinent part as follows:

1. For the purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, operation standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) in this section . . .

20. On June 19, 1978, the Administrator determined that

work practice standards rather than emission standards are appropriate in the regulation of asbestos, 43 Fed. Reg. 26372 (1978), and therefore, pursuant to Section 112 of the CAA, the USEPA has adopted National Emission Standards for Hazardous Air Pollutants (NESHAPs), including asbestos, 40 CFR 61, Subpart M.

21. Section 61.141 of the USEPA's NESHAPs, 40 CFR 61.141 (July 1, 199), provides in part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

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 A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously

subject to this subpart is not excluded, regardless of its current use of function.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR 763 section 1, Polarized Light Microscopy, that, when dry can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

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 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.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

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

22. The building located at 911 West Busse Avenue, Park Ridge, Cook County, is a "facility" as that term is defined in 40 CFR 61.141.

23. The disturbance of the asbestos-containing floor tile

at the building constitutes a "renovation" as that term is defined in 40 CFR 61.141.

24. Respondent DiFranco, as the owner of the building, was the "owner" of the renovation activities, as that term is defined in 40 CFR 61.141.

25. Respondent MCI, as the corporation that operated, controlled or supervised the renovation activities, was the "operator" of the renovation activities, as that term is defined in 40 CFR 61.141.

26. Section 61.145 of Title 40 of the Code of Federal Regulations, 40 CFR 61.145 (July 1, 2002), as adopted in Section 9.1 (d) of the Act, titled, Standard for demolition and renovation: provides, in pertinent part, 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:

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

1. At least 80 linear meters (260

linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components.

27. Section 61.145 (b) (1) of USEPA's NESHAPs, 40 CFR 61.145 (b) (1) (July 1, 2002), as adopted in Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), titled, Standard for demolition and renovation: Notification requirements, provides in pertinent part as follows:

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 this notice by U.S. Postal Service, commercial delivery, or hand delivery is acceptable.

28. Respondents, as owners and/or operators of the Site failed to submit to the Illinois EPA written notification of renovation and demolition ten (10) working days before any activity began that would break up, dislodge, or similarly disturb the ACM or preclude access to the ACM for subsequent removal.

29. The Respondents by their omissions as alleged herein, have violated Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.145 (b) (1).

WHEREFORE, Complainant, THE PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against PAUL DiFRANCO, SR., AND MARK'S CONSTRUCTION, INC. on this Count II:

1. Authorizing a hearing in this matter at which time the

Respondents will be required to answer the allegations herein;

2. Finding that Respondents have caused or allowed violations of Section 9.1 (d) (1) of the Act and 40 CFR 61.145 (b) (1);

3. Ordering the Respondents to cease and desist from any further violations of Section 9.1 (d) (1) of the Act and 40 CFR 61.145 (b) (1);

4. Assessing a civil penalty of \$50,000 against each Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000 per day for each day that the violations continued;

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

6. Granting such other relief as this Board deems appropriate and just.

COUNT III

FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count II as paragraphs 1 through 26 of this Count III.

27. Section 61.145 (c) (1) of USEPA's NESHAPs, 40 CFR 61.145 (c) (1) (July 1, 2002), titled, Standard for demolition and renovation: Procedures for asbestos emission control,

provides in pertinent part as follows:

Each owner or operator of a demolition or renovation 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 material or preclude access to the material for subsequent removal.

28. Respondents, as owners and operators of a renovation activity, failed to remove all RACM from the facility being renovated before beginning activity that would break up, dislodge, or similarly disturb the material or preclude access for subsequent removal in violation of the Clean Air Act, or more specifically the NESHAP for asbestos.

29. The Respondents, by the actions or inactions as alleged herein, have violated Section 9.1 (d) (1) (2002), 415 ILCS 5/9.1 (d) (1) (2002) and 40 CFR 61.145 (c) (1).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, PAUL DiFRANCO, SR. and MARK'S CONSTRUCTION, INC. on this Count III:

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

2. Finding that Respondents have caused or allowed violations of Section 9.1 (d) (1) of the Act and 40 CFR 61.145 (c) (1);

3. Ordering the Respondents to cease and desist from any further violations of Section 9.1 (d) (1) of the Act and 40 CFR 61.145 (c) (1);

4. Assessing a civil penalty of \$50,000 against each Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000 per day for each day that the violations continued;

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

6. Granting such other relief as this Board deems appropriate and just.

COUNT IV

FAILURE TO ADEQUATELY WET ALL RACM

1-26. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 26 of Count II as paragraphs 1 through 26 of this Count IV.

27. Section 61.145 (c) (6) of USEPA's NESHAPs, 40 CFR 61.145 (c) (6) (July 1, 2002), as adopted in Section 9.1 (d) of the Act, titled, Standard for demolition and renovation: Procedures for asbestos emission control, provides, in pertinent part, as follows:

Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(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;

28. Respondents failed to adequately wet and maintain wet all RACM and ACWM generated until collected and contained in preparation for disposal. The Illinois EPA observed significant amounts of dry, friable RACM on the floor of several rooms of the building that had been disturbed during the renovation.

29. Respondents by their omissions as alleged herein, have violated Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.145 (c) (6).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, PAUL DiFRANCO, SR., and MARK'S CONSTRUCTION, INC., on this Count IV:

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

2. Finding that Respondents have caused or allowed violations of Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.145 (c) (6);

3. Ordering the Respondents to cease and desist from any further violations of Section 9.1(d) (1) of the Act and 40 CFR 61.145 (c) (6);

4. Assessing a civil penalty of \$50,000 against each Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000 per day for each day that the violations continued;

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

6. Granting such other relief as this Board deems appropriate and just.

COUNT V

FAILURE TO FOLLOW PROPER DISPOSAL PROCEDURES

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count II as paragraphs 1 through 26 of this Count V.

27. Section 61.150 (b) of USEPA's NESHAPs, 40 CFR 61.150 (b) (July 1, 2002), as adopted in Section 9.1 (d) of the Act, titled, Standard for demolition and renovation: Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations, provides in pertinent part as follows:

Each owner or operator of any source covered under the provisions of §§61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

- (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 Section 61.154; or
- (2) An EPA approved site that converts RACM and asbestos containing waste material into non-asbestos (asbestos free) material according to the provisions of Section 61.155.

28. The Respondents failed to deposit, as soon as practicable, all ACWM generated during renovation activities within a site permitted to accept such waste.

29. Respondents by their actions or inactions as alleged herein, have violated Section 9.1 (d) (1) of the Act, 415 ILCS 5/9.1 (d) (1) (2002), and 40 CFR 61.150 (b) (July 1, 2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, PAUL DiFRANCO, SR., and MARK'S CONSTRUCTION, INC., on this Count V:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that Respondents have caused or allowed violations of Section 9.1 (d) (1) of the Act and 40 CFR 61.150 (b);
3. Ordering the Respondents to cease and desist from any further violations of Section 9.1 (d) (1) of the Act and 40 CFR 61.150 (b);
4. Assessing a civil penalty of \$50,000 against each

Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000 per day for each day that the violations continued;

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

6. Granting such other relief as this Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

By:



ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

KATHERINE A. KELLY
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601
(312) 814-3153
Atty. No. 99000

CERTIFICATE OF SERVICE

I, KATHERINE A. KELLY, an Assistant Attorney General, do certify that I caused to be mailed this 29th day of July, 2004, the foregoing COMPLAINT and NOTICE OF FILING upon the persons listed on said NOTICE by Certified Mail.

Katherine A. Kelly
KATHERINE A. KELLY