

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez 3/12/10
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2009-0103

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Morrison-Clark, Inc.

Total Dollar Amount of Receivable \$ 27,500 Due Date: 4/9/10

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1ST \$ _____ on _____
2ND \$ _____ on _____
3RD \$ _____ on _____
4TH \$ _____ on _____
5TH \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)**

RECEIVED
2009 MAR 12 A 11:08
EPA OFFICE
NEW HAVEN, CONNECTICUT

_____))
In the Matter of:))
Morrison-Clark, Inc.,))
Respondent.))
_____))

Docket No. CAA-01-2009-0103

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency – Region 1 (“EPA”), filed a Complaint and Notice of Opportunity for Hearing (“Complaint”), on September 28, 2009, under Section 113(d) of the Clean Air Act (“Act” or “CAA”), 42 U.S.C. § 7413(d), and Section 22.14 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (“Rules of Practice”), 40 C.F.R. § 22.14, against Respondent, Morrison-Clark, Inc. (“Morrison-Clark”).

EPA and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing, without adjudication of any issue or fact or law upon the record, and upon consent and agreement of the Parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. The Complaint alleges that, from on or about July 11, 2008 until on or about July 28, 2008, Morrison-Clark conducted a renovation operation at the Main Street Middle School in Montpelier, Vermont including, but not necessarily limited to, sanding, grinding, cutting, abrading, or otherwise making friable approximately 3,300 square feet of vinyl asbestos floor tile (“VAT”) stripped or removed from the Main Street School. The Complaint alleges that the 3,300 square feet of VAT involved in the renovation was regulated asbestos-containing material (“RACM”), as defined by 40 C.F.R. § 61.141, and exceeded the threshold quantity set forth in 40 C.F.R. § 61.145(a)(4).

2. The Complaint also alleges that Respondent violated Section 112 of the CAA, 42

U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M (“Asbestos NESHAP”), by failing to comply with various notification, work practice, and disposal requirements therein and, for each of the violations, proposes to assess a civil penalty of up to \$32,500 per day, pursuant to CAA Section 113(d).

3. On or about October 7, 2009, Respondent filed an Answer to the Complaint and requested a hearing pursuant to Section 113(d) of the Act and the Rules of Practice. In its Answer, Respondent denied certain allegations in the Complaint and asserted a number of affirmative defenses to the alleged violations.

4. For the purposes of this proceeding, without trial or litigation of the issues or any adjudication of the facts, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent also waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the specific facts underlying the violations set forth in the Complaint, consents to the terms of this CAFO.

5. For the purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and to appeal the Final Order accompanying this Consent Agreement.

II. TERMS OF SETTLEMENT

6. By signing this Consent Agreement, Respondent certifies that it will no longer participate in any demolition or renovation operations that involve removal of VAT by Respondent. Such prohibition includes, but is not limited to, any and all projects that require VAT to be stripped, removed, dislodged, cut, drilled, or similarly disturbed. Additionally, by signing this Consent Agreement, Respondent certifies that it is presently operating in compliance with Section 112 of the CAA and the Asbestos NESHAP.

7. Based on EPA’s findings and allegations in the Complaint, and taking into account the penalty assessment criteria of Section 113(e) of the CAA and other relevant factors, including Respondent’s financial ability to pay a penalty, EPA has determined that it is appropriate to accept a monetary settlement of this matter in the amount of \$27,500.

8. Morrison-Clark shall pay the \$27,500 amount within 30 days of Respondent’s receipt of this CAFO, signed by the Regional Judicial Officer. Subject to the terms of this CAFO, such payment is intended by Morrison-Clark solely as a means to avoid the commitment

of time and resources that would be involved in litigating this matter.

9. Respondent shall make payment by submitting a bank, cashier's, or certified check for \$27,500, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note the case name and docket number (*In re: Morrison-Clark, Inc.*, CAA 01-2009-0103) on the check and in an accompanying cover letter, and shall provide copies of each to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA – Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

and to

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA – Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

10. Pursuant to 31 U.S.C. § 3717, if Respondent fails to pay the full settlement amount specified in Paragraph 7, Respondent may be subject to a civil action to collect that amount plus interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that all or any part of the settlement amount, plus interest thereon, is not paid when due without demand, the settlement amount plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt that remains delinquent more than 90 days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

11. If Respondent fails to pay all or any portion of the settlement amount due and payable under this CAFO by the required deadline, files a voluntary petition in bankruptcy under

the Bankruptcy Code of the United States, is adjudicated as bankrupt under such Code, is the subject of a petition filed in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, then the full balance of all outstanding amounts due, together with all interest and penalties accrued at the rates specified herein, shall automatically and immediately become due and payable. Upon the occurrence of any of the events or conditions described in the preceding sentence, Respondent shall give immediate notice to EPA at the following address:

Nancy Barmakian, Manager
Toxics and Pesticides Unit
U.S. EPA – Region 1
5 Post Office Square, Suite 100 (OES 05-4)
Boston, MA 02109-3912
Attention: Sharon Hayes, Asbestos Enforcement Coordinator

12. All amounts paid under this agreement or any subsequent action to enforce the terms of this agreement shall not be deductible for purposes of federal taxes. Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and further agrees not to use such payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

13. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the Clean Air Act for the specific violations alleged in the Complaint. Except as expressly provided otherwise in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

14. Each party shall bear its own costs and fees in this proceeding, and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

15. The provisions of this CAFO shall apply to, and be binding on EPA and Respondent, its officers, directors, successors and assigns.

16. The undersigned representative of Morrison-Clark, Inc. certifies that he or she is

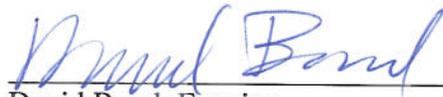
fully authorized to enter into the terms and conditions of this CAFO, execute the CAFO, and legally bind Respondent to it.

FOR RESPONDENT, MORRISON-CLARK, INC.:



Paul K. Morrison, III, President
Morrison-Clark, Inc.

Date: 2/24/2010



David Bond, Esquire
Counsel for Morrison-Clark

Date: 2/26/10

FOR COMPLAINANT, U.S. EPA – REGION 1:



Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA – Region 1

Date: 03/04/10



Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA – Region 1

Date: 3-2-10

III. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



Jill T. Metcalf, Acting Regional Judicial Officer
U.S. EPA – Region 1

Date: March 9, 2010