



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 20, 2009

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OFFICE OF
ADMINISTRATIVE LAW JUDGES

Hugh W. Martinez, Esquire
Enforcement Counsel (SEL)
U.S. EPA
One Congress Street, Suite 1100
Boston, MA 02114-2023

REGISTRATION CLERK

Re: Morrison-Clark, Inc.
Docket No. CAA-01-2009-0103

Dear Mr. Martinez:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of adjudicative cases. Please inform my legal staff assistant, Maria Whiting-Beale by **November 3, 2009**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be conducted pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571 *et seq.*, by a Judge of this Office serving as a neutral. The process will be entirely voluntary and completely confidential; both of these points, together with general procedures, are reviewed below.

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Facilitation is a method in which the neutral Judge acts as a facilitator, promoting communication and understanding of the issues, in a less active role than as a mediator. The focus of the facilitator Judge is to provide structure and moderate the discussion among the parties to assist them in coming to a settlement. Facilitation

may be particularly useful in cases where there is more than one respondent, where the parties are represented by counsel who are very experienced in settling environmental enforcement cases and who agree that settlement is very likely, where a Supplemental Environmental Project is likely to be proposed, or other cases where flexibility in the ADR process is needed.

Neutral Evaluation is a method in which the neutral Judge, to assist the parties in reaching a settlement, hears each party's position and arguments, either in writing, orally or both, may request the parties to submit documents or other information, then gives an oral opinion on the strong and weak points of each party's case, and may, if requested by the parties, provide an opinion of the likely outcome of the case if it went to hearing. Neutral Evaluation may be particularly useful in cases in which the respondent has one or more affirmative defenses, or where a crucial issue in the case is a question of law.

Mediation is a method in which the neutral Judge, as mediator, hears each party's position and arguments, either in writing, orally or both, may ask the parties questions, may request the parties to submit documents or other information, helps identify the factual and legal issues, enables each party to understand the other party's position and arguments, keeps the focus on the facts and issues that may lead toward settlement, and helps the parties explore their options, including practical concerns, to assist the parties in reaching a settlement. The mediator may give an opinion on the strengths and/or weaknesses of a case, if requested by the parties. Mediation is particularly useful for cases in which the respondent is not represented by counsel (*pro se*), where the parties dispute the facts of the case, or where the parties do not agree to neutral evaluation or facilitation.

Authorization to Commit For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to somebody with such authority.

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Non-binding The neutral Judge has no authority to impose a decision or settlement of the case on the parties. The purpose of ADR is to facilitate a settlement between the parties.

Impartial The neutral Judges, as all Judges in this Office, render their decisions and opinions independent of any supervision or direction by any prosecuting or investigating employee or agent of the Environmental Protection Agency, and independent of the influence of any interested person outside the Agency, pursuant to Sections 554(d) and 557 of the Administrative Procedure Act (APA). The Judges are certified as administrative law judges by the Office of Personnel Management and are appointed in accordance with 5 U.S.C. § 3105. The Judges are not subject to evaluation by the Environmental Protection Agency, or by any component or employee of EPA. These measures ensure the fair and impartial resolution of proceedings.

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Follow Up At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

Again, please inform Maria Whiting-Beale by **November 3, 2009**, whether you accept or decline participation in the ADR process that I have described. It is preferred that you inform Ms. Whiting-Beale by e-mail at <whiting-beale.maria@epa.gov> or by facsimile at (202) 565-0044. However, you may inform her by calling this Office, 202 564-6271, and leaving a message for her, or by letter received in this Office on or before the due date. The mailing address **if sent by mail is:** U.S. EPA, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-2001. **For hand-delivery by Federal Express or another delivery service** which x-rays packages as a routine security procedure, the address is: U.S. EPA, Office of Administrative Law Judges, 1099 14th Street, N.W., Suite 350, Washington, DC 20005. Please also send a copy of your response to the Regional Hearing Clerk.

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Very truly yours,



Susan L. Biro
Chief Administrative Law Judge

cc: David Bond, Esquire
Judy Lao-Ruiz, Acting Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 20, 2009

David Bond, Esquire
Fead Construction Law, PLC
3000 Williston Road, Suite 2
South Burlington, VT 05403

Re: Morrison-Clark, Inc.
Docket No. CAA-01-2009-0103

Dear Mr. Bond:

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Facilitation is a method in which the neutral Judge acts as a facilitator, promoting communication and understanding of the issues, in a less active role than as a mediator. The focus of the facilitator Judge is to provide structure and moderate the discussion among the parties to assist them in coming to a settlement. Facilitation



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Neutral Evaluation is a method in which the neutral Judge, to assist the parties in reaching a settlement, hears each party's position and arguments, either in writing, orally or both, may request the parties to submit documents or other information, then gives an oral opinion on the strong and weak points of each party's case, and may, if requested by the parties, provide an opinion of the likely outcome of the case if it went to hearing. Neutral Evaluation may be particularly useful in cases in which the respondent has one or more affirmative defenses, or where a crucial issue in the case is a question of law.

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One Congress Street, Suite 1100
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EPA ORG
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Re: Morrison-Clark, Inc.
Docket No. CAA-01-2009-0103

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