

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

RECEIVED

In the Matter of:)

Morrison-Clark, Inc.)

889 Route 14 South)

P.O. Box 600)

South Barre, Vermont 05670)

Proceeding under Section 113 of the)

Clean Air Act, 42 U.S.C. § 7413)

Docket No. CAA-01-2009-0103

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

2009 SEP 28 P 12: 28

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

I. STATEMENT OF AUTHORITY

1. Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), issues this civil, administrative Complaint and Notice of Opportunity for Hearing to Respondent, Morrison-Clark, Inc. ("Morrison-Clark"), under Section 113(d) of the Clean Air Act ("Act"), 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.

2. The Complaint notifies Morrison-Clark that EPA intends to assess penalties for violations of Section 112 of the Act, 42 U.S.C. § 7412, and the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"), by Respondent. The Notice of Opportunity for Hearing describes Morrison-Clark's option to file an Answer to the Complaint and to request a formal hearing.

3. Section 113(d) of the Act provides authority for the assessment of penalties for violation of, *inter alia*, regulations promulgated under Section 112 of the Act. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this Complaint, which addresses certain violations that commenced more than 12 months ago, is

an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C.

§ 7413(d)(1).

4. The Administrator of EPA, under Section 112 of the Act, has promulgated regulations known as the Asbestos NESHAP, codified at 40 C.F.R. Part 61, Subpart M.

5. Under the Asbestos NESHAP, certain inspection, notification, work practice, and waste disposal requirements at 40 C.F.R. §§ 61.145(a), 61.145(b), 61.145(c), and 61.150 apply to each owner or operator of a demolition or renovation activity at a regulated facility if the combined amount of "regulated asbestos-containing material (RACM)," as defined in 40 C.F.R. § 61.141, to be stripped, removed, dislodged, cut, drilled, or similarly disturbed meets or exceeds the regulatory threshold amount of at least 80 linear meters (260 linear feet) on pipes, at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously ("Threshold Quantity"). 40 C.F.R. § 61.145(a)(4).

6. Under the Asbestos NESHAP, vinyl asbestos floor tile ("VAT") is a "resilient floor covering" containing more than one percent (1%) asbestos that is classified as a "Category I nonfriable asbestos-containing material (ACM)." 40 C.F.R. § 61.141.

7. Under the Asbestos NESHAP at 40 C.F.R. § 61.141, Category I nonfriable ACM becomes RACM when it becomes friable or when it has been, or will be, subjected to sanding, grinding, cutting, or abrading.

II. GENERAL ALLEGATIONS

8. Respondent, Morrison-Clark, Inc., is a corporation organized under the laws of

Vermont, does business in Vermont, and has its principal place of business at 889 Route 14 South, P.O. Box 600 in South Barre, Vermont. Morrison-Clark is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

9. In 2008, Morrison-Clark was retained by the Montpelier Public School District (“District”) to remove existing VAT and install new flooring in certain areas within the Main Street Middle School located in Montpelier, Vermont (the “School” or “Main Street School”). The School is a “facility,” as defined at 40 C.F.R. § 61.141.

10. From on or about July 11, 2008 until on or about July 28, 2008, Morrison-Clark conducted work at the Main Street School including, but not necessarily limited to, sanding, grinding, cutting, abrading, or otherwise making friable approximately 3,300 square feet of VAT stripped or removed from the Main Street School (the “Renovation”). The approximately 3,300 square feet of VAT involved in the Renovation was RACM, as defined at 40 C.F.R. § 61.141, and exceeded the Threshold Quantity set forth in 40 C.F.R. § 61.145(a)(4).

11. The above-described work (i.e., the Renovation) carried out by Morrison-Clark at the School was a “renovation,” as defined at 40 C.F.R. § 61.141. With respect to the Renovation, Morrison-Clark was an “owner or operator of demolition or renovation activity,” as defined at 40 C.F.R. § 61.141, subject to the Asbestos NESHAP.

12. On or about July 28, 2008, the Vermont Department of Health (“VT DOH”) became aware of a potentially improper or illegal removal of VAT from the Main Street School and, in response, sent a VT DOH inspector to the School to conduct an on-site inspection there (the “Inspection”).

13. During the Inspection, the VT DOH inspector observed Morrison-Clark employees and/or agents stripping or removing VAT from floors at the Main Street School using a power tool, in particular, a mechanical chipper. The inspector further observed that such stripping or removal was occurring without the use of water or any other wet removal methods.

14. During the Inspection, the VT DOH inspector observed that the stripping or removal of VAT from floors at the Main Street School was being conducted in a manner that involved sanding, grinding, cutting, abrading, or otherwise making friable, the VAT subject to such stripping or removal. The inspector further observed dry dust and debris, including bits and pieces of VAT, within work areas affected by the Renovation.

15. Based on observations made during the Inspection, the VT DOH inspector took action to ensure that all work associated with the Renovation ceased immediately and that a representative of the District closed the School to unauthorized persons and posted warning signs to restrict entry.

16. During the July 28, 2008 Inspection, the VT DOH inspector collected physical samples of VAT involved in the Renovation for laboratory analysis to determine the presence of asbestos. On July 29, 2008, the VT DOH inspector took photographs of the physical condition of interior portions of the Main Street School, including VAT and associated dust and debris present therein, involved in the Renovation.

17. Laboratory analysis of samples collected during the Inspection from VAT involved in the Renovation showed that such VAT contained greater than one percent asbestos and was "regulated asbestos-containing material (RACM)," as defined at 40 C.F.R. § 61.141. Such

laboratory analysis was conducted using the Polarized Light Microscopy method specified in 40 C.F.R. § 61.141. *See* Appendix E of 40 C.F.R. Part 763, Subpart E.

18. Based on conditions within the work areas at the Main Street School where Morrison-Clark carried out the Renovation, the District retained the services of licensed asbestos abatement and remediation contractors to conduct an assessment, abatement and clean-up of all areas within the School affected by the Renovation. The clean-up of asbestos involved in the Renovation was completed at the Main Street School on or about August 21, 2008.

19. On or about August 4, 2008, EPA issued an Immediate Compliance Order to Morrison-Clark, pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), citing violations of the Act and the Asbestos NESHAP arising out of the Renovation at the Main Street School.

20. On or about December 9, 2008, EPA issued a Clean Air Act Reporting Requirement to Morrison-Clark (the "Reporting Requirement") under Section 114 of the Act, 42 U.S.C. § 7414, seeking further, detailed information pertaining to the Renovation. On or about January 8, 2009, Morrison-Clark provided EPA with a response to the Reporting Requirement.

III. VIOLATIONS

COUNT 1 [Failure to Notify of Intention to Renovate]

21. Paragraphs 1 through 20, above, are incorporated by reference as if fully set forth herein.

22. Pursuant to 40 C.F.R. § 61.145(b), for scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos

NESHAP requires that each owner or operator of a demolition or renovation activity provide EPA with prior written notification of intention to demolish or renovate in the manner specified by 40 C.F.R. § 61.145(b).

23. Prior to the Renovation, Morrison-Clark failed to provide EPA with prior written notification of intention to demolish or renovate in the manner specified by 40 C.F.R. § 61.145(b).

24. Accordingly, Morrison-Clark violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(b), and Section 112 of the Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT 2 [Failure to Adequately Wet Asbestos While Stripping]

25. Paragraphs 1 through 24, above, are incorporated by reference as if fully set forth herein.

26. Pursuant to 40 C.F.R. § 61.145(c)(3), for scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that, when RACM is stripped from a facility component while it remains in place at the facility, each owner or operator of a demolition or renovation activity adequately wet the RACM during stripping, unless prior written approval to use another emission control method is obtained from EPA.

27. During the Renovation, Morrison-Clark failed to adequately wet RACM during stripping or to obtain prior EPA approval of another control method.

28. Accordingly, Morrison-Clark violated the Asbestos NESHAP, at 40 C.F.R.

§ 61.145(c)(3), and Section 112 of the Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act.

COUNT 3 [Failure to Keep Asbestos Adequately Wet]

29. Paragraphs 1 through 28, above, are incorporated by reference as if fully set forth herein.

30. Pursuant to 40 C.F.R. § 61.145(c)(6)(i), for scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

31. During the Renovation, Morrison-Clark failed to adequately wet RACM that had been removed or stripped and to ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

32. Accordingly, Morrison-Clark violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(c)(6)(i), and Section 112 of the Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act.

COUNT 4 [Failure to Properly Dispose of Asbestos Waste]

33. Paragraphs 1 through 32, above, are incorporated by reference as if fully set forth herein.

34. Pursuant to 40 C.F.R. §§ 61.150(a), (b), and (c), for scheduled demolition and

renovation operations at a facility involving at least the Threshold Quantity of RACM, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity properly dispose of asbestos-containing waste materials ("ACWM"), as defined at 40 C.F.R. § 61.141, generated by the source by complying with the emission control, site selection, and waste transport requirements in Sections 61.150(a), (b), and (c) of the Asbestos NESHAP.

35. During the Renovation, Morrison-Clark failed to properly dispose of ACWM generated by the renovation operation in accordance with the requirements of Sections 61.150(a), (b), and (c) of the Asbestos NESHAP.

36. Accordingly, Morrison-Clark violated the Asbestos NESHAP, at 40 C.F.R. §§ 61.150(a), (b), and (c), and Section 112 of the Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act.

IV. PENALTY ASSESSMENT

37. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and the Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorize the assessment of civil administrative penalties of up to \$32,500 per day for each violation of the Clean Air Act which occurred after March 15, 2004 but before January 12, 2009. By this Complaint, Complainant seeks to assess civil penalties against Respondent of up to \$32,500 per day of violation for each of the violations alleged herein.

38. To assess a penalty against Morrison-Clark under Section 113(d) of the Act, EPA will take into account the particular facts and circumstances of this case as well as the penalty assessment criteria of Section 113(e), 42 U.S.C. § 7413(e). The penalty assessment criteria of

Section 113(e) include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. To apply these criteria, EPA will reference the "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991 ("Penalty Policy"), and Appendix III to the Penalty Policy, entitled "Asbestos Demolition and Renovation Civil Penalty Policy," dated May 5, 1992 ("Appendix III"), copies of which are enclosed with this Complaint. The Penalty Policy and Appendix III provide a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

39. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the violations alleged herein and explaining how the proposed penalty was calculated, as required by the Rules of Practice at 40 C.F.R. Part 22 (copy enclosed). Complainant will calculate a proposed penalty based, in part, on its current knowledge of Respondent's financial condition. The penalty may be adjusted if Respondent establishes *bona fide* issues of ability to pay or other issues or defenses relevant to determining an appropriate penalty. Respondent shall pay any civil penalty assessed by cashier's or certified check, payable to the "Treasurer, United States of America," and mail it to:

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

Respondent should note on the check the name and docket number of this case (*In Re: Morrison-Clark, Inc.*, Docket No. CAA-01-2009-0103). In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to both the Regional Hearing Clerk and the EPA attorney handling this case, at the addresses provided, below.

40. The assessment or payment of a civil penalty shall not affect Respondent's ongoing obligation to comply with the Clean Air Act and other applicable federal, state, or local laws.

V. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

41. As provided by Section 113(d) of the Act, Respondent has a right to request a hearing on the issues raised in this Complaint. Any such hearing will be conducted in accordance with the Rules of Practice, 40 C.F.R. Part 22. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the penalty is inappropriate or that Respondent is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, and serve a copy on EPA, at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (Mail Code RAA)
Boston, Massachusetts 02114-2023

and

Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (Mail Code SEL)
Boston, Massachusetts 02114-2023
Telephone: (617) 918-1867


An Answer must be filed within thirty (30) days of receipt of the Complaint. See 40 C.F.R. § 22.15 for the required contents of an Answer.

42. The failure to file an Answer will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the Act. In that event, Respondent would be subject to default under 40 C.F.R. § 22.17 and any penalty assessed in a default order would be due and payable within 30 days after the order became final.

VI. SETTLEMENT CONFERENCE

43. Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the violations or the amount of the penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order. To explore the possibility of settlement in this matter, you should contact (or have your attorney contact) EPA Senior Enforcement Counsel Hugh W. Martinez, at (617) 918-1867. Under Section 22.5(c)(4) of the Rules of Practice, Mr. Martinez is authorized to receive service on behalf of EPA. Please note that a request for an informal settlement conference does not extend the 30-day period for the submission of a written Answer.

SO ISSUED:


Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

9-25-09
Date

In re: Morrison-Clark, Inc.
CAA-01-2009-0103

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint and Notice of Opportunity for Hearing and Cover Letter to the Acting Regional Hearing Clerk have been provided to the following persons on the date noted below:

*Original and one copy,
hand-delivered:*

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

*One copy (with Part 22 Rules
and Penalty Policy enclosed),
by Certified Mail,
Return Receipt Requested:*

Paul K. Morrison, III, President
Morrison-Clark, Inc.
889 Route 14 South
P.O. Box 600
Boston, MA 02116

Dated: 9-28-09



Hugh W. Martinez
Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone (dir.): 617-918-1867
Fax: 617-918-0867
E-mail: martinez.hugh@epa.gov



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REGION 1 - NEW ENGLAND
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

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ENVIRONMENTAL STEWARDSHIP
REGIONAL HEARING CLERK

HUGH W. MARTINEZ
direct: (617) 918-1867

BY HAND

September 28, 2009

Judy Lao-Ruiz, Acting Regional Hearing Clerk
EPA Region 1 - New England
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

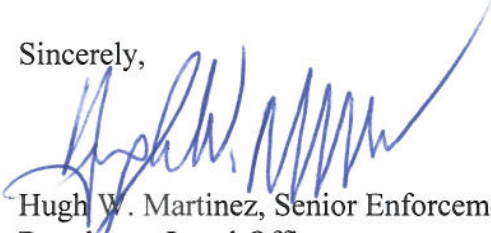
Re: In the Matter of: Morrison-Clark, Inc., Docket No. CAA-01-2009-0103
Complaint and Notice of Opportunity for Hearing

Dear Ms. Lao-Ruiz:

Please find enclosed for filing the original and one copy of a Complaint and Notice of Opportunity for Hearing to initiate the above-entitled case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the Complaint and Notice of Opportunity for Hearing was mailed to Respondent, Morrison-Clark, Inc., in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: Paul K. Morrison, III, President, Morrison-Clark, Inc.
Peter Kudarauskas, EPA Region 1



**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND**

One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

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OFFICE OF
REGIONAL HEARING CLERK

HUGH W. MARTINEZ
direct: (617) 918-1867

BY HAND

September 28, 2009

Judy Lao-Ruiz, Acting Regional Hearing Clerk
EPA Region 1 - New England
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

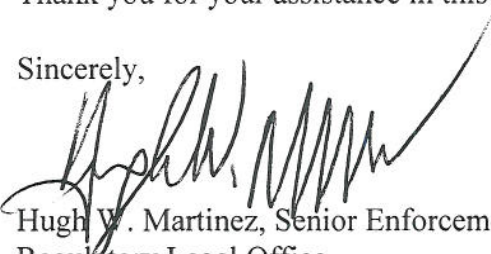
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Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: Paul K. Morrison, III, President, Morrison-Clark, Inc.
Peter Kudarauskas, EPA Region 1