



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

October 15, 2009

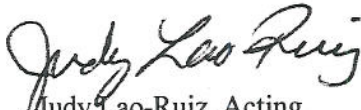
Honorable Susan L. Biro  
Chief, Administrative Law Judge (1900c)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: In the Matter of Morrison-Clark, Inc.  
Docket No. CAA-01-2009-0103

Dear Judge Biro:

Pursuant to 40 C.F.R. 22.21(a) of the Consolidated Rules of Practice, I am transmitting a copy of the Complaint and Notice of Opportunity for Hearing in the above captioned matter along with Respondent's Answer and Request for Hearing. Please assign an Administrative Law Judge to serve as Presiding Officer.

Sincerely,

  
Judy Lao-Ruiz, Acting  
Regional Hearing Clerk

Enclosures

cc: Respondent(s)

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

Counsel for Complainant:

Hugh W. Martinez  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND REGION)

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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

**ANSWER AND REQUEST FOR HEARING**

The Respondent, Morrison-Clark, Inc. ("Morrison-Clark"), by and through its attorneys, hereby answers the allegations set forth in the Complaint. Respondent further requests an opportunity for a hearing in this matter.

**I. STATEMENT OF AUTHORITY**

1. Nontraversable.
2. Nontraversable.
3. Morrison-Clark denies that it has committed any violation of the Clean Air Act or the National Emission Standard for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP").

Otherwise nontraversable.

4. Nontraversable.
5. Nontraversable.
6. Nontraversable.
7. Nontraversable.

Fead Construction Law, PLC

Mailing Address:  
P.O. Box 673  
Burlington, VT 05402-0673

Street Address:  
3000 Williston Rd, Suite 2  
South Burlington, VT 05403

## II. GENERAL ALLEGATIONS

8. Admitted.

9. Admitted.

10. Morrison-Clark admits that beginning on July 18 until July 28, 2008, its subcontractors conducted work at the Main Street School in Montpelier but denies that the work involved sanding, grinding, cutting, abrading, or otherwise making friable any vinyl asbestos floor tile (“VAT”). Morrison-Clark denies that the VAT being removed was regulated asbestos-containing material (“RACM”) as defined in 40 C.F.R. § 61.141. The VAT was scraped off the floor with a mechanical scraper. This process was not expected to and did not render the material friable. The use of a mechanical scraper does not differ in any material respect from scraping the material off the floor by hand.

11. Morrison-Clark admits that it was the “owner or operator of ... renovation activity” as defined in 40 C.F.R. § 61.141, but denies that its activities included the stripping or removal of RACM.

12. Morrison-Clark denies that it was involved in any improper or illegal removal of VAT from the Main Street School. Morrison-Clark admits that on July 28, 2008, Andrew Chevrefils, an employee of the Vermont Department of Health, received a telephone “tip” regarding alleged improper or illegal removal of VAT. Mr. Chevrefils traveled to the Main Street School to conduct an inspection of the work being performed.

13. Morrison-Clark admits that its subcontractor was stripping or removing VAT from floors at Main Street School using a power tool. Morrison-Clark denies that its subcontractor was using a “mechanical chipper” to perform this work or that the individuals performing the work were

employees or agents of Morrison-Clark. As noted above, the machine being used scraped and did not chip the material from the floor.

Morrison-Clark denies that the stripping or removal occurred without the use of water. At all times the VAT being removed was kept adequately wet. Although Mr. Chevrefils subsequently alleged that wetting procedures were not being followed, an e-mail he wrote on the afternoon of July 28, 2008 stated: “There [sic] work procedures did include some wetting....”

14. Morrison-Clark denies that the VAT removal at the Main Street School was conducted in a manner that involved sanding, grinding, cutting, abrading, or otherwise making the VAT friable. The inspector’s observations concerning dust are irrelevant – no testing was ever conducted to determine that the dust contained asbestos. The presence of “bits and pieces” of VAT merely represents breakage during the removal process, as could be expected even were the material removed by hand.

15. Morrison-Clark admits that Mr. Chevrefils ordered its subcontractor to cease operations, which it did. Morrison-Clark has insufficient information to admit or deny what steps Mr. Chevrefils may have taken after Morrison-Clark’s subcontractor left the premises.

16. Morrison-Clark admits that Mr. Chevrefils submitted samples of VAT he obtained from the Main Street School for testing. This step was unnecessary because the school had already conducted these tests some years earlier, confirming that the floor tile contained asbestos. Mr. Chevrefils did not collect any dust samples or air samples. Morrison-Clark admits that Mr. Chevrefils took photographs of the areas its subcontractor had been working. Due to the effects of evaporation, these photographs do not accurately show conditions as they existed when Morrison-Clark’s workers were ordered to cease operations.

17. Morrison-Clark admits that the VAT samples Mr. Chevrefils obtained from the Main Street School were submitted for testing. Morrison-Clark denies that polarized light microscopy is a sufficient method for determining whether asbestos-containing material is friable, or can reasonably be expected to become friable. Such testing provides no basis for the conclusion that the material is RACM.

18. Morrison-Clark admits that, following the Vermont Department of Health shutdown, the Montpelier School District retained the services of asbestos abatement contractors. Morrison-Clark denies that the school district took this action based on conditions within the work areas. Rather, this action was taken because the Vermont Department of Health was requiring it. Morrison-Clark admits that asbestos abatement contractors performed clean-up work but denies that this work involved the clean-up of asbestos as no free asbestos (above permissible background levels) was ever found.

19. Morrison-Clark admits that the EPA issued an Immediate Compliance Order but denies that this action was justified.

20. Admit.

### III. VIOLATIONS

#### COUNT 1

(Failure to Notify of Intention to Renovate)

21. Nontraversable.

22. Nontraversable.

23. Morrison-Clark admits that it did not provide the EPA with prior written notification of its intent to perform the work but denies that this was required, as its work did not involve any RACM.

24. Denied.

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COUNT 2

(Failure to Adequately Wet Asbestos While Stripping)

25. Nontraversable.

26. Nontraversable.

27. Morrison-Clark denies that it failed to adequately wet the VAT, and denies that the material was RACM. Morrison-Clark admits that it did not obtain EPA approval of another control method but denies that this was required, as the material was not RACM.

28. Denied.

COUNT 3

(Failure to Keep Asbestos Adequately Wet)

29. Nontraversable.

30. Nontraversable.

31. Morrison-Clark denies that it failed to adequately wet the VAT, denies that it failed to keep the VAT adequately wet, and denies that the material was RACM.

32. Denied.

COUNT 4

(Failure to Properly Dispose of Asbestos Waste)

33. Nontraversable.

34. Nontraversable.

35. Denied. Morrison-Clark adequately wet all asbestos-containing material, placed those materials in leak-tight wrappings, and carefully lowered the materials to a lined dumpster. The materials were removed from the site by the school district's asbestos abatement contractors and not Morrison-Clark.

36. Denied.

#### IV. PENALTY ASSESSMENT

37. Morrison-Clark denies that any civil penalty is warranted, let alone the maximum penalty authorized under applicable law. Otherwise, nontraversable.

38. Morrison-Clark denies that any civil penalty is warranted, or that the EPA has applied the penalty assessment criteria in such a manner as to arrive at a rational, consistent or equitable calculation of the proposed penalty. Otherwise, nontraversable.

39. Nontraversable.

40. Nontraversable.

#### V. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

41. Respondent hereby submits its Answer and requests a hearing on the issues raised in the Complaint.

42. Nontraversable.

#### VI. SETTLEMENT CONFERENCE

43. Nontraversable.

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**AFFIRMATIVE DEFENSES**

1. Failure to state a claim upon which relief may be granted.
2. The regulations pertaining to renovations of facilities with asbestos-containing materials are unconstitutionally vague, as applied.

Respectfully submitted: October <sup>7<sup>th</sup></sup>7, 2009.

MORRISON-CLARK, INC.

By:   
William Alexander Fead, Esq.  
David Bond, Esq.  
Fead Construction Law, PLC  
3000 Williston Road, Suite 2  
South Burlington, VT 05403  
(802) 863-5808

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2009 OCT 15 P 4: 04

October 7, 2009

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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

Dear Ms. Lao-Ruiz:

Enclosed for filing please find an original and one copy of the Respondent's Answer and Request for Hearing in the above-referenced matter. Thank you for your assistance.

Yours truly,



David Bond

Enclosure

cc: Hugh W. Martinez, Senior Enforcement Counsel

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Respectfully submitted: October <sup>14<sup>th</sup></sup><sub>7</sub>, 2009.

MORRISON-CLARK, INC.

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David Bond, Esq.  
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