



CONMY ♦ FESTE
Attorneys

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August 13, 2009

CONMY FESTE LTD.

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kbrust@conmylaw.com

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Proposed Assessment of Civil Penalty against Old Orchard, LLC and
Meridian Commercial Construction, LLC


Enclosed for filing are the following documents:

1. Old Orchard, LLC Motion to Amend Answer;
2. Old Orchard, LLC Unopposed Amended Answer;
3. Affidavit of Kim E. Brust; and
4. Affidavit of Service by Mail.

Paul M. Hubbard
Kim E. Brust†
Michael M. Thomas
Robert J. Schultz
Jeremy D. Holmes
Stephannie N. Stiel
Douglas W. Murch
Charles A. Feste, Retired
E.T. Conmy, Jr. (1912 - 2006)

Also Licensed in Minnesota
† Certified Civil Trial Specialist -
National Board of Trial Advocacy

Regards,


Kim E. Brust
KEB/rg
Encls.

cc: Peggy Livingston
James R. Bullis

UNITED STATES
ENVIRONMENT PROTECTION AGENCY
REGION 8

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In the Matter of:)
)
Old Orchard, LLC)
and)
Meridian Commercial Construction, LLC,)
)
Respondents.)

**OLD ORCHARD, LLC MOTION TO
AMEND ANSWER**

Docket No.: CWA 08-2009-0015

Old Orchard, LLC, hereby moves for leave to file the attached Unopposed Amended Answer. An Affidavit of Kim E. Brust is submitted in support of this motion.

Dated this 13 day of August, 2009.



Kim E. Brust
For CONMY FESTE LTD.
406 Main Avenue, Suite 200
PO Box 2686
Fargo, ND 58108-2686
Telephone: (701) 293-9911
North Dakota ID No.: 03556

ATTORNEYS FOR RESPONDENTS

UNITED STATES
ENVIRONMENT PROTECTION AGENCY
REGION 8

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In the Matter of:)
)
Old Orchard, LLC) **UNOPPOSED AMENDED ANSWER**
 and) **OF OLD ORCHARD, LLC AND**
Meridian Commercial Construction, LLC,) **REQUEST FOR HEARING**
)
Respondents.) Docket No.: CWA 08-2009-0015
)
)

Old Orchard, LLC, for its Answer to the Complaint alleges:

1. All allegations contained in the Complaint are denied, except as admitted, qualified or explained in this Answer.

2. Admits the allegations contained in paragraphs 1 through 3, 5 through 23, and 25 through 32.

3. Denies the allegations contained in paragraph 4 that it owns the property in question and affirmatively alleges that ownership of the referenced property was transferred by means of various deeds on January 6, 2006.

4. Denies the allegations of paragraph 24 as it relates to Old Orchard, LLC.

5. With regard to the allegations contained in paragraph 33, admits that Old Orchard, LLC, did not obtain or apply for permanent authorization for discharge as alleged, but states that Meridian Commercial Construction, LLC was responsible for obtaining or applying for permanent authorization.

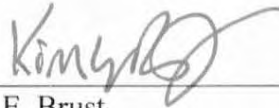
6. With respect to the allegations contained in paragraph 34, denies that the actions on the part of Old Orchard, LLC constitute a violation of 40 C.F.R. § 122.21(c) and 122.26(c) and

sections 308 and 402(p) of the Act, 33 U.S.C. § §1318 and 1342(p).

7. Denies the allegations contained in paragraphs 35 through 38 as they relate to Old Orchard, LLC.

WHEREFORE, Old Orchard, LLC requests a hearing with respect to the allegations of the Complaint and the appropriateness of the proposed penalty.

Dated this 13 day of August, 2009.



Kim E. Brust
For CONMY FESTE LTD.
406 Main Avenue, Suite 200
PO Box 2686
Fargo, ND 58108-2686
Telephone: (701) 293-9911
North Dakota ID No.: 03556

ATTORNEYS FOR RESPONDENTS

UNITED STATES
ENVIRONMENT PROTECTION AGENCY 2009 AUG 17 PM 3: 13
REGION 8

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In the Matter of:)
)
Old Orchard, LLC)
and)
Meridian Commercial Construction, LLC,)
)
Respondents.)

AFFIDAVIT OF KIM E. BRUST

Docket No.: CWA 08-2009-0015

Kim E. Brust, being first duly sworn, deposes and says:

1. I am one of the attorneys for Old Orchard, LLC, and have filed this Affidavit in support of the Motion to Amend Answer.

2. The original Answer erroneously admitted paragraph 4 of the Complaint. I have now learned through my client that the tract of land which he owns is not the addresses listed in paragraph 4 of the Complaint. Copies of deeds showing the transfer of the property at issue in the Complaint are attached as Exhibit "1" to this Affidavit.

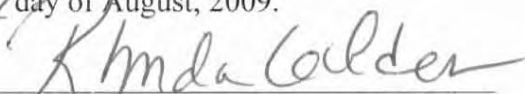
3. I have spoken with all parties. They have authorized me to state that they do not oppose the Motion to Amend Answer.

Dated this 13 day of August, 2009.

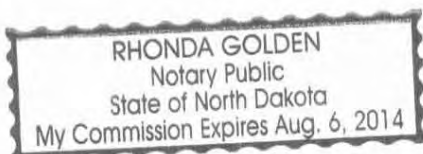


Kim E. Brust

Subscribed and sworn to before me this
13 day of August, 2009.



Notary Public



I certify that the requirement for a report or statement of full consideration paid does not apply as this transaction is exempt under N. D. Cent. Code 11-18-02.2(6)(i).

Signed: _____

Grantee or Agent

Date: 1-6-06

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Properties.wpd

WARRANTY DEED

THIS INDENTURE is made this 6th day of January, 2006, between Old Orchard LLC, a North Dakota limited liability company, Grantor, and Borg Properties 45th, LLC, a North Dakota limited liability company, Grantee, whose post office address is 73 Broadway, PO Box 932, Fargo, ND 58107-0932.

For ten dollars and other good and valuable consideration, Grantor does hereby GRANT to Grantee the following described real property in Cass County, North Dakota:

Lots 1, 2 and 7, Block 1, King Addition to the City of Fargo, Cass County, North Dakota;

-AND-

Lots 3, 4 and 5, except that portion of said Lot 5, Block 1, King Addition to the City of Fargo, Cass County, North Dakota, being further described as follows: Beginning at the northwest corner of said Lot 5; thence North 87 degrees 38 minutes 18 seconds East on the north line of said Lot 5 for a distance of 20.00 feet; thence South 02 degrees 21 minutes 42 seconds East for a distance of 239.58 feet; thence South 42 degrees 35 minutes 00 seconds West for a distance of 28.31 feet to the southeast corner of Lot 6 of said Block 1 and the west line of said Lot 5; thence North 02 degrees 21 minutes 42 seconds West on the west line of said Lot 5 for a distance of 259.62 feet to the point of beginning.

(This legal description was prepared by Ulteig Engineers, 3350 38th Avenue South, Fargo, ND 58104.)

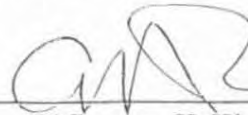
Subject to easements, restrictions and reservations of record.

Grantor does covenant with the Grantee that it is well seized in fee of the property and has good right to sell and convey it, and that the property is free from all incumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection. The Grantor will warrant and defend the property in the quiet and peaceable possession of the Grantee, against all persons lawfully claiming or to claim the whole or any part thereof.

IN TESTIMONY WHEREOF, Grantor has caused this deed to be executed in its name by one or more officers for the day and year first above written.

OLD ORCHARD LLC

By



O'Gorman H. King, Jr., President

