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June 29, 2009

Regional Hearing Clerk of EPA Region 8  
1595 Wynkoop St.  
Mail code 8RC  
Denver, Colorado 80202

Docket number CWA-08-2009-0015

Attn: Ms. Amy Clark  
Environmental Scientist

This letter is in response to the penalty complaint and notice of opportunity for hearing. It would be our desire to resolve these alleged allegations concerning the issues you have brought up. I would like to address several of these items individually and give our explanation to each issue.

1. I would like to firstly address the issue of our not being involved with the project at 4425 31<sup>st</sup> Avenue South. We were not even incorporated or in existence when this first project was constructed. We were involved in the next two projects, 3120 South 44<sup>th</sup> Street and 3142 South 44<sup>th</sup> Street.
2. There is also a definite separation with all of these projects as far as ownership. Each of these projects has separate owners group and LLC status. We feel that these should not be combined as a development project but rather separate entities as they are legally.
3. I would also like to point out that we hired a professional land management company, Agassiz land Management (ALM) to coordinate the permit process, to install all required barriers and curbs, to monitor their presence, and to follow proper reporting of all site conditions from start to finish with each project. We have documentation that starts on the 16<sup>th</sup> of October, 2006 and runs continuously through today's date. They have been a fixture with our company since we started. We also have documentation starting from an October billing, 2006, that lists 'Old Orchard 42 plex as the project listing 'storm water' as the item, dated October 2006, the amount, invoice number 2809 and that it was paid by Meridian Commercial Construction (MCC) with check number #1013. Enclosed is a copy of the original ALM billing and our check #1013 to ALM. We can supply you with our records that run concurrently with this first invoice through the present day. We also have their daily logs and reports from this first starting invoice. I am bringing this up to support that we were not lacking in commitment in doing

the proper course of action and to be totally within the guidelines provided by the EPA, City of Fargo and the State of North Dakota.

4. We also show a report by ALM that they completed the permit and gave it to Brooks Johnson of MCC on the 17<sup>th</sup> of October, 2006. Brooks stated that he completed a notice of intent (NOI) and mailed it to the NDDOH. We feel that there has been a mishandling of the permit with either the NDDOH or the US Postal service. Our facts show, based on the letter from Amy Clark with EPA on 9-23-2008 in paragraph 4, that we called the NDDOH to find the copy of the coverage letter. The NDDOH responded to us that they could not find one but remember hearing about it. With that, we faxed over the signed application we had on file in the office to Dallas and he called and left a message that he would just process it and he would keep looking for the one that was mailed back in October of 2006.
5. We also acknowledge that at the time of the September 23<sup>rd</sup>, 2008 inspection, our dirt contractor was right in the middle of applying black dirt to get ready for sod to get the job site 100% stabilized. The bio-rolls were displaced during this process to get the black dirt along the curb edge to finish the grade for Sod. We have a filed report that ALM was immediately taking action to the alleged infractions that were observed on that date. We have and will continue to have, ongoing meetings with all of our subcontractors to be fully aware of their actions and how it relates to our responsibilities in storm water protection.
6. We would like to offer that in Claim #1.) Brooks stated that he completed a notice of intent (NOI) and mailed it to the NDDOH. We feel that there has been a mishandling of the permit with either the NDDOH or the US Postal service. Our facts show based on the letter with Amy Clark with EPA on 9-23-2008 in paragraph 4, that we called the NDDOH to find the copy of the coverage letter. The NDDOH responded to us that they could not find one but remember hearing about it. With that, we faxed over the signed application we had on file in the office to Dallas and he called and left a message that he would just process it and he would keep looking for the one that was mailed back in October of 2006.
7. As for Claim #2.) Yes, water was discharged into the storm drains but we filled out and mailed in our Notice of Intent to the NDDOH back in October of 2006 along with implementing our erosion control products to stay in compliance with the City of Fargo, NDDOH and the EPA. We were properly engaging this with our land management's support and recommendations. As the dates of the reports show, they are exactly at the time of issuance with our building permits and start of our building process of the second building. This should magnify our desire to be a responsible company trying to comply fully with your requirements and not a company shrugging its responsibility or trying to avoid working with the State, City and EPA.

8. For your Claim #3) I can only respond that we have been educated by the NDDOH and have used their SWPPP template as a guideline to being in compliance. If our SWPPP is not in compliance then the NDDOH is also not in compliance and is misleading us in what the exact requirements are. In fact we have received an e-mail from the NDDOH updating their SWPPP to be in better standards with the EPA. We have and will continue to strive for the best methods for all parties in being in compliance. We realize that a clean jobsite is not only necessary for your requirements but also for our employees and subcontractors safety. As you can see we have a storm water management program in place along with our best management practices.

In your section 309(g)(1)(A) of the Act, 33U.S.C. 1319(g)(1)(A), requires EPA to take into account the following factors in assessing a civil administrative penalty 1) the nature, circumstances, extent and gravity of the violations, 2) prior compliance history, 3) degree of culpability, 4) any economic benefit, 5) ability to pay, and 6) other matters that justice may require. On your comment of:

- 1) We addressed immediately questions brought about sediment in the storm drains with follow-up photos and documentation. You state that the 'Respondent's failure to seek permit authorization until after EPA's inspection jeopardizes the integrity at EPA and NDDOH programs to control storm water pollution. As we wrote earlier in this response, we allege and have written proof that we did have a SWPPP in place and had a licensed land management company on board from the start of these projects. Again, we have documentation and monthly reports, billings from the land management company, and our records that show we paid for every invoice sent to us about these projects.
- 2) We agree that this is the first time any enforcement action regarding non compliance has been issued to Meridian Commercial Construction
- 3) We fully agree that we should be 'fully aware of our responsibility to meet the requirements related to storm water control. We hired a professional land management company to take this responsibility and to adhere to your guidelines.
- 4) You state the "respondent receive an economic benefit from their failure to obtain Permit authorization and their failure to comply with the requirements in the storm water discharge permit. They benefited by not spending the required funds to install and maintain all necessary BMD (e.g., storm inlet protection, straw waddles, street cleaning) and to develop a complete SWPPP. As we have stated before, we will show our monthly detailed billing from ALM that includes daily/weekly comments, products (BMP's) placed and serviced through out the duration of both projects, and their activity log, that we paid for these services.
- 5) We agree that the EPA did not reduce the proposed penalty due to this factor.
- 6) We acknowledge the EPA is making no adjustment regarding this factor.

Again, the first project that you show, that of 4425 31<sup>st</sup> Avenue South should not be included in this action. I would also like to offer that we have spent additional monies providing our staff with advanced training and awareness, providing our field staff with additional equipment to be in compliance with the city, state and federal requirements. The amount of your proposed penalty of \$35,000 would have a very adverse detrimental effect on our small company. I feel we have demonstrated our sincere desire to fulfill every requirement that is required by us and we would like the opportunity to show you our total commitment to this end. I have recently become the new general manager for Meridian Commercial Construction and I bring a vast knowledge of proper construction practices and storm water management. It would be our genuine desire to eliminate this penalty and use this as an example on how we can further improve our commitment to protecting our nation's waters.

Thank you very much to your attention to this matter and we look forward to hearing from you.

Gary A. Martin

A handwritten signature in cursive script that reads "Gary A. Martin". The signature is written in black ink and is positioned above the typed name and title.

General Manager  
Meridian Commercial Construction

Enclosures