montgomery goff & bullis



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Kyle G. Pender kyle@bullislow.com

Licensed in North Dakota and Minnesota 2009 AUG 17 PM 3: 12

EPA REGION VIII HEARING CLERK

August 14, 2009

Regional Hearing Clerk (8RC) US EPA, Region 8 1595 Wynkoop Street Denver CO 80202-1129

RE: Proposed Assessment of Civil Penalty against Old Orchard, LLC and Meridian Commercial Construction, LLC Docket No.: CWA 08-2009-0015

Our File No. KGP-186-1

Dear Clerk:

Enclosed herewith for filing please find the following:

- Meridian Commercial Construction, LLC's Motion to Amend Answer;
- Meridian Commercial Construction, LLC's Unopposed Amended Answer and Request for Hearing;
- 3. Affidavit of Kyle G. Pender; and,
- 4. Affidavit of Service by Mail.

Very truly yours,

Kyle G. Pender

KGP/jjy Enclosure

pc: Kim E. Brust

Peggy Livingston

RE: Proposed Assessment of Civil Penalty Against Old Orchard, LLC and Meridian Commercial Construction, LLC

Docket No. CWA 08-2009-0015

2009 AUG 17 P

2009 AUG 17 PM 3: 12

STATE OF NORTH DAKOTA
)
)ss. AFFIDAVIT OF SERVICE BY MAILERK
COUNTY OF CASS
)

The undersigned, being first duly sworn, says that a copy of the attached:

Meridian Commercial Construction, LLC's Motion to Amend Answer;

Meridian Commercial Construction, LLC's Unopposed Amended Answer and
Request for Hearing; and,

Affidavit of Kyle G. Pender

was served upon the following by enclosing the same in an envelope addressed to such attorney(s) and/or person(s) at their address(es) with postage fully prepaid and by depositing the said envelopes in a United States Postal Service mailbox at Fargo, North Dakota, on August 14, 2009.

Kim E. Brust Conmy Feste, Ltd. PO Box 2686 Fargo ND 58108-2686 Peggy Livingston
Office of Enforcement, Compliance
and Environmental Justice
Region 8
United States EPA
1595 Wynkoop Street (ENF-L)
Denver CO 80202

Subscribed and sworn to before me on August 1 , 2009.

Notary Public, Cass County, North Dakota

JESSICA J YANISH Notary Public State of North Dakota My Commission Expires Jan. 19, 2015

## UNITED STATES **ENVIRONMENTAL PROTECTION AGENCY REGION 8**

2009 AUG 17 PM 3: 12

GHEB

In the Matter of:	EPA REGION VIII
j	Docket No. CWA 08-2009-0045CLERK
Old Orchard, LLC,	
and )	
Meridian Commercial Construction, LLC,)	MOTION TO AMEND ANSWER OF
)	MERIDIAN COMMERCIAL
Respondents.	CONSTRUCTION, LLC
)	

Meridian Commercial Construction, LLC hereby moves for leave to file the attached Unopposed Amended Answer. The Affidavit of Kyle G. Pender is submitted in support of this motion.

Dated: August 14, 2009.

MONTGOMERY GOFF & BULLIS, P.C.

James R. Bullis

ND ID #04980 ND ID #06300

Kyle G. Pender PO Box 9199

Fargo ND 58106-9199

Telephone: (701) 281-8001

Attorneys for Respondent Meridian

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 2009 AUG 17 PM 3: 12

FILED

In the Matter of:	EPA REGION VIII
)	MERIDIAN COMMERCIAL
Old Orchard, LLC )	CONSTRUCTION, LLC'S UNOPPOSED
and )	AMENDED ANSWER AND REQUEST
Meridian Commercial Construction, LLC,)	FOR HEARING
Respondents.	Docket No. CWA 08-2009-0015

Meridian Commercial Construction, LLC (hereinafter "Meridian"), for its Answer to the Complaint, states and alleges as follows:

- Except as is hereinafter admitted, qualified, or otherwise explained,
   Respondent Meridian denies each and every allegation of the Complaint.
- Respondent Meridian admits the allegations contained in Paragraphs 1 through 5, 7 through 23, 27 through 30, and 32 of the Complaint.
- Respondent Meridian denies Paragraph 6 of the Complaint. Meridian has had the day-to-day responsibility for the construction site for a portion of the construction period since 2006.
- Respondent Meridian denies Paragraph 24 of the Complaint as it relates to Meridian.
- Respondent Meridian admits Paragraph 25 of the Complaint to the extent that the EPA conducted a storm water inspection on September 23, 2008, and expressly denies the remaining portion of Paragraph 25.
- Respondent Meridian admits Paragraph 26 of the Complaint to the extent that the EPA inspected on September 23, 2008.

- 7. Respondent Meridian is incapable of admitting or denying Paragraph 32.
- Respondent Meridian denies Paragraphs 31 and 33 through 38 of the Complaint.

WHEREFORE, Respondent Meridian requests a hearing with respect to the allegations of the Complaint and the appropriateness of the proposed penalty.

Dated: August 14, 2009.

MONTGOMERY GOFF & BULLIS, P.C.

James R. Bullis

ND ID #04980 ND ID #06300

Kyle G. Pender PO Box 9199

Fargo ND 58106-9199

Telephone: (701) 281-8001

Attorneys for Respondent Meridian

Commercial Construction, LLC

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

#H FD

In the Matter of: )	EPA REGION VIII  Docket No. CWA 08-2009-5015
Old Orchard, LLC,	
and ) Meridian Commercial Construction, LLC,)	AFFIDAVIT OF KYLE G. PENDER
Respondents. )	
)	

- I, Kyle G. Pender, after being first duly sworn, depose and state as follows:
- I am one of the attorneys for Meridian Commercial Construction, LLC and have filed this Affidavit in support of the Motion to Amend Answer.
- Respondent, Meridian Commercial Construction, LLC originally filed its
  Answer on June 29, 2009. This original Answer failed to admit or deny several
  paragraphs of the Complaint. Respondent, Meridian Commercial Constructions, LLC's
  Amended Answer clarifies its answer to each and every paragraph in the Complaint.
- I have spoken with all parties. They have authorized me to state that they
  do not oppose the Motion to Amend Answer.

Dated: August 14, 2009.

Kyle G. Pender

JESSICA J YANISH
Notary Public
State of North Dakota
My Commission Expires Jan. 19, 2015

Notary Public

Cass County, North Dakota