

June 29, 2018

Darrell Nitschke  
Executive Secretary  
Public Service Commission  
State Capitol  
Bismarck, North Dakota 58505-0480

RE: Complaint

Dear Executive Secretary Darrell Nitschke:

The Environmental Law & Policy Center and the Dakota Resource Council hereby file a complaint against Meridian Energy Group, Inc. pursuant to N.D.A.C. § 69-02-02-02. We will hand-deliver ten hard copies of the complaint and a disc containing the exhibits on Monday, July 2, 2018.

The following is attached for electronic filing:

**Complaint**

**Exhibit A: Application for Billings County Building and Zoning Certificate and Conditional Use Permit**

**Exhibit B: April 5, 2017 Application to Department of Health for Permit to Construct**

**Exhibit C: October 6, 2016 Application to Department of Health for Permit to Construct**

**Exhibit D: Final Department of Health Permit to Construct**

**Exhibit E: Stock Placement Memorandum**

**Exhibit F: Compiled URLs with cross-references to archived links**

**Exhibit G: July 20, 2016 letter from Meridian attorney to PSC**

**Exhibit H: March 1, 2017 letter from PSC to Meridian**

**Exhibit I: March 24, 2017 letter from Meridian attorney to PSC**

Sincerely,

**BRAATEN LAW FIRM**

/s/ Derrick Braaten

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**ENVIRONMENTAL LAW & POLICY CENTER**

/s/ Scott Strand

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*Motion for Admission Pro Hac Vice Pending*

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**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

**Environmental Law & Policy Center and  
Dakota Resource Council,** )  
 )  
 )  
 **Complainants/** )  
 **Petitioners,** )  
 )  
 )  
 **vs.** )  
 )  
 **Meridian Energy Group, Inc.,** )  
 )  
 )  
 **Respondent.** )

**COMPLAINT**

**Case No.** \_\_\_\_\_

1. The Environmental Law & Policy Center (“ELPC”) and Dakota Resource Council (“DRC”), on behalf of their members, complain that Meridian Energy Group, Inc. (“Meridian”) is currently or will soon be acting in violation of North Dakota law through its planning and construction of a refinery with a capacity of over 50,000 barrels per day (“bpd”) without obtaining a certificate of site compatibility from the North Dakota Public Service Commission (“PSC”). ELPC and DRC hereby allege and state the following:

**I. INTRODUCTION**

2. Meridian plans to construct an oil refinery, known as the Davis Refinery, in Billings County, North Dakota, approximately 3 miles from the South Unit of the Theodore Roosevelt National Park. Meridian has taken the position that it can avoid siting review by the PSC by developing the refinery in two stages, the first of which would be under the 50,000 bpd threshold that triggers the requirement of a certificate of site compatibility. Meridian then plans to construct a second “phase” of the refinery—expanding beyond the statutory threshold. This is an impermissible attempt to circumvent the siting law.

3. North Dakota law provides that a company must obtain a certificate of site compatibility prior to construction of an oil refinery with a capacity of 50,000 bpd or more. N.D.C.C. § 49-22.1-04. Meridian plans to construct an oil refinery with a capacity of more than 50,000 bpd. While Meridian has stated to the PSC that it is only currently planning to build the first stage of the refinery, and has no plans to develop beyond the 50,000 bpd capacity threshold, the company has made and continues to make contrary statements in permit applications, in news articles, and to potential investors. Moreover, the fact that Meridian plans to construct its refinery in stages does not make the refinery smaller than the PSC's jurisdictional threshold, and it does not exempt the refinery from the required siting review. Meridian is required by law to obtain a certificate of site compatibility prior to beginning construction of the refinery.

4. Site review by the PSC is crucial to the protection of the public interest. As explained by the North Dakota legislature, a certificate of site compatibility is required for refineries over 50,000 bpd because “[i]t is necessary to ensure the location, construction, and operation” of oil refineries “will produce minimal adverse effects on the environment and the welfare of the citizens of this state.” N.D.C.C. § 49-22.1-02. Importantly, the PSC is the *only* agency that is empowered by law to give a holistic review of the planned refinery, including impacts to the air, water, land, and to cultural, historical, and recreational resources, like the Theodore Roosevelt National Park, and determine the appropriateness of the proposed site.

5. Dividing a project into pieces so that individual phases avoid jurisdictional thresholds and evade review is an approach that has been used, and disallowed, in many contexts. A strikingly similar case was decided by the California Energy Resources Conservation and Development Commission (“California Energy Commission”). *In the Matter of: Hacienda Heights Improvement Association v. County Sanitation Districts of Los Angeles County*, 1987

WL 93993 (Cal. Energy Resources Conservation and Development Comm'n). In that case, the California Energy Commission had siting jurisdiction over waste-to-energy facilities over 50 megawatts. The Sanitation Districts of Los Angeles County attempted to evade siting review by constructing its 94 megawatt waste-to-energy facility in 2 phases of 47 megawatts each, to come online 3 years apart. The California Energy Commission determined that the project must be considered as a single facility, explaining that “the protection of such statewide interests cannot be defeated by artificially dividing larger projects into smaller units under 50 MW to thereby foreclose Commission review.” *Id.* at 2. The agency also rejected the Sanitation Districts’ argument that they need not submit an application because they were not yet beyond the “planning and studying” stage, finding that the Sanitation Districts had demonstrated a formal or *de facto* commitment to construction of the project, and had taken steps beyond the planning phase, including efforts to secure financing and obtain air permits. *Id.* at 6-8.

6. Similar tactics for evading review have also been rejected in analogous environmental review and permitting programs, such as the National Environmental Policy Act (“NEPA”) and the Clean Air Act. In the NEPA context, the prohibition on “segmentation” “prevent[s] agencies from dividing one project into multiple individual actions each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 297 (D.C. Cir. 1988) (citations and internal quotations omitted). In another example, in *Florida Wildlife Federation v. U.S. Army Corps of Engineers*, 401 F. Supp. 2d 1298, 1317 (S.D. Fla. 2005), it was improper for the U.S. Army Corps of Engineers to separately review only the first phase of a proposed development and determine that that phase would not have significant impacts to the environment—and therefore that more detailed environmental review was not required—because the development

“was conceptualized as an integrated whole, progressing in phases, and . . . the [initial phase] was never intended to stand alone.” *Id.* at 1318. This was true even though the company had not yet applied to the Corps for a permit for later stages of the development. Similarly, Meridian cannot break its development into multiple stages to avoid agency review.

7. Another relevant legal doctrine is the prohibition on “sham” permitting in the context of New Source Review under the Clean Air Act, where there are significant differences between the permitting of a small (“minor”) source and a large (“major”) source. Sham permitting occurs when an operator receives a permit based on operating limits for a facility to keep the facility below the emissions threshold for a major source or major modification (in order to avoid more stringent review), but plans to remove these operating limits soon after the facility or expansion is constructed. The EPA has explained that “it is not only improper but also a violation of the Clean Air Act to construct a source or major modification with a minor source permit when there is intent to operate as a major source or major modification. Permits with conditions that do not reflect a source’s planned mode of operation are sham permits, are void *ab initio*, and cannot shield a source from the requirement to undergo preconstruction review.”<sup>1</sup> The same reasoning applies here.

8. Despite Meridian’s phasing of the construction into two stages, the refinery is still a single facility that will be completed as a whole. As such, it would be arbitrary and inadequate to conduct a site review prior to the second phase, but after the construction of the initial phase. Allowing Meridian to bypass siting review before the initial phase would allow Meridian to avoid a meaningful analysis of alternative sites and undermine the PSC’s authority under the

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<sup>1</sup> *Memorandum on Applicability of New Source Review Circumvention Guidance*, from John B. Rasnic, Director of Stationary Source Compliance Division, Office of Air Quality Planning and Standards, U.S. EPA to George T. Czerniak, Chief, Air Enforcement Branch, Region V, U.S. EPA (June 17, 1993), <https://www.epa.gov/sites/production/files/2015-07/documents/maplwood.pdf>.

law. Some of the most important parts of the siting laws—including review of environmental and cultural resources impacts, adequacy of infrastructure, and impacts on the public—would become impossible for the PSC to meaningfully apply to Meridian *after* Meridian constructs phase 1 of its refinery. Likewise, certain project designs or features that would be warranted or desirable to mitigate impacts could become too complex or expensive to incorporate after the first phase is completed.

9. ELPC's and DRC's members will be injured both substantively and procedurally if Meridian is allowed to circumvent siting review. Both ELPC and DRC have members who live, work, and recreate near the proposed refinery site, and would be denied the benefit of the PSC's review of the proposed refinery location and the possibility of the PSC requiring Meridian to locate its refinery at a different site. Further, ELPC's and DRC's members will not be provided the public participation opportunities required as part of the PSC's siting review process. In addition, ELPC's and DRC's members will be injured if the planned refinery is sited inappropriately. For example, because Meridian plans to construct the oil refinery approximately three miles from the border of the Theodore Roosevelt National Park, ELPC's and DRC's members' recreational use of the National Park for hiking, camping, nature-watching, and more, would be injured by air, noise, and light pollution, as well as from aesthetic impacts from the planned refinery. Additionally, ELPC's and DRC's members would not receive the benefit of the PSC reviewing Meridian's siting plans to ensure that prime farmland is appropriately preserved, that the refinery will not be constructed in a dangerous location such as a floodplain, and that cultural and environmental resources are adequately protected.

## **II. PARTIES**

10. ELPC is a nonprofit Midwest-based advocacy organization with an office and staff in Jamestown, North Dakota. ELPC has long been involved in efforts to promote responsible energy development, and to protect public health and special places like the Theodore Roosevelt National Park. ELPC has members who use and enjoy the Theodore Roosevelt National Park and surrounding region.

11. DRC is a North Dakota nonprofit corporation with its principal place of business located in Bismarck, ND. Formed in 1978, DRC brings together people across North Dakota to organize around common goals of a sustainable economy and responsible use of resources in North Dakota. One of DRC’s enduring issues—since its founding—has been advocacy to minimize the negative impacts of oil and gas development by ensuring compliance with applicable laws. DRC is a member-driven organization with over 1,000 North Dakota members in good standing, including members who live, work, and recreate near and adjacent to the proposed Davis Refinery.

12. Meridian is a corporation formed to construct and operate the Davis Refinery. Meridian is a utility under N.D.C.C. Chapter 49-22.1, which defines “utility” to include “any person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.” N.D.C.C. § 49-22.1-01(12). “Person” is defined to include “any individual, firm, association, partnership, cooperative, corporation, [or] limited liability company.” § 49-22.1-01(9).

### **III. APPLICABLE LAW**

13. ELPC and DRC bring this complaint and petition for relief pursuant to N.D.A.C. § 69-02-02-02, which provides that complaints before the PSC “may be made . . . by any person.” “Person” is defined to include “any individual, partnership, corporation, association, [or] organized group.” N.D.A.C. § 69-02-01-09.

14. North Dakota law states that “[a] utility may not begin construction of a gas or liquid energy conversion facility . . . in the state without first having obtained a certificate of site compatibility . . . pursuant to this chapter.” N.D.C.C. § 49-22.1-04. A gas or liquid energy conversion facility includes “any plant, addition, or combination of plant and addition, designed for or capable of . . . [m]anufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day.” N.D.C.C. § 49-22.1-01(6).

15. This requirement reflects a finding of the North Dakota legislature that:

[T]he construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. It is necessary to ensure the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and the welfare of the citizens of this state by prohibiting energy conversion facilities and transmission facilities from being located, constructed, or operated within this state without a certificate of site compatibility or a route permit acquired under this chapter. The policy of this state is to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. Sites and routes must be selected to minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and fulfilling energy needs in an orderly and timely fashion.

N.D.C.C. § 49-22.1-02.

16. The following factors are to be considered in evaluating a site: “[a]vailable research and investigations relating to the effects of the location, construction, and operation of the planned facility on public health and welfare, natural resources, and the environment”; “[t]he effects of new gas or liquid energy conversion and gas or liquid transmission technologies and

systems designed to minimize adverse environmental effects”; “[t]he potential for beneficial uses of waste energy from a proposed gas or liquid energy conversion facility”; “[a]dverse direct and indirect environmental effects that cannot be avoided should the planned site or route be designated”; “[a]lternatives to the proposed site, corridor, or route that are developed during the hearing process and which minimize adverse effects”; “[i]rreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated”; “[t]he direct and indirect economic impacts of the proposed facility”; “[e]xisting plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route”; “[t]he effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites”; “[t]he effect of the proposed site or route on areas that are unique because of biological wealth or because the site or route is a habitat for rare and endangered species”; and “[p]roblems raised by federal agencies, other state agencies, and local entities.” N.D.C.C. § 49-22.1-09; *see also* N.D.A.C. ch. 69-06-08.

17. The PSC is required to “hold a public hearing in each county in which any portion of a site, corridor, or route is planned to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application . . . and the factors to be considered pursuant to section 49-22.1-09.” N.D.C.C. § 49-22.1-10.

18. In addition, the PSC “may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a

common database, or for any other purpose relating to the provisions of this chapter.” N.D.C.C. § 49-22.1-12.

#### IV. FACTS

##### A. Meridian’s Planned Refinery

19. On December 23, 2015, *Oil & Gas Journal* published an article stating that Meridian “has let a contract to Vepica CA, Caracas, and BASIC Equipment, Houston, to provide preliminary studies for its proposed 55,000-b/sd Davis refinery to be built on 620 acres near Belfield, ND.”<sup>2</sup>

20. Meridian plans to build the refinery on a 708-acre site approximately three miles west of Belfield, North Dakota. The project will have numerous negative impacts on the surrounding area, both during construction and operation, including from significant air emissions, water consumption and the discharge of waste water, noise pollution, a high rate of truck traffic, and aesthetic impacts. *See, e.g.*, Application for Billings County Building and Zoning Certificate and Conditional Use Permit, Exhibit A at p. 17-19.

21. Meridian plans to construct the project in two phases. The first phase will produce a limited set of products: gasoline, aviation fuel, diesel fuel, and atmospheric tank bottoms. Meridian refers to this first phase as “Davis Light.” Upon information and belief, Davis Light is economically viable only under very favorable market conditions. The second phase will produce a full set of refined products. Meridian refers to the two phases together as “Davis Full.” “Davis Full” at full capacity “includes atmospheric distillation, naphtha and intermediate distillates hydrotreatment, naphtha reforming and benzene saturation, vacuum distillation, and hydrocracking to process up to 55,000 BPD of Bakken crude oil into a full slate of refined

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<sup>2</sup> Robert Brelsford, Meridian Energy Lets Contract for North Dakota Refinery Project, *Oil & Gas Journal*, <https://www.ogj.com/articles/2015/12/meridian-energy-group-plan-refinery-for-north-dakota.html> (Dec. 23, 2015).

products including LPG, Tier 3 Gasoline, Jet Fuel, ULSD, and Low-sulfur Fuel Oil.” April 5, 2017 Application to Department of Health for Permit to Construct, Exhibit B at p. 8. Upon information and belief, the economic viability of Davis Full is considerably more favorable than that of Davis Light.

**B. Meridian has told three separate government entities in official permit applications that it plans to build a 55,000 bpd refinery.**

22. Meridian has filed formal permit applications with at least three governmental entities indicating that Meridian’s Davis Refinery will refine up to 55,000 bpd.

23. On March 26, 2016, Meridian submitted an application for a building permit and conditional use permit to the Billings County Planning and Zoning Department. The application describes the Davis Refinery as “a phased approximately 55,000 bpd high conversion crude oil refinery.” Exhibit A at 17.

24. On May 19, 2016, Meridian applied to the North Dakota State Water Commission for a water allocation permit for the Davis Refinery. Meridian requested 645.2 acre feet of water per year, which it characterized as the amount needed for a refinery with a 55,000 bpd capacity. *See generally* State Engineer Administrative Record for Conditional Water Permit No. 6858.

25. On October 6, 2016, Meridian submitted an application for an air quality Permit to Construct the Davis Refinery to the North Dakota Department of Health. In the application, Meridian requested approval “for the construction of a new crude oil refinery, the Davis Refinery, with a nominal processing capacity of 55,000 barrels per day.” Exhibit C.

26. On April 15, 2017, Meridian revised its application to the North Dakota Department of Health for an air quality Permit to Construct the Davis Refinery. Exhibit B. In the revised application, Meridian reiterated that “Meridian Energy Group, Inc. ... [was] formed to build and operate the Davis Refinery[,] ... a 55,000 bpd high conversion crude oil refinery, in

Billings County, North Dakota ...” Meridian refers to the Davis Refinery’s 55,000 bpd “capacity” and “throughput” in twenty-one separate locations throughout the April 15, 2017 application.

27. The North Dakota Department of Health issued a Permit to Construct for the Davis Refinery on June 12, 2018. The Permit describes the source as having a capacity of 55,000 bpd and states that “construction of the Davis Refinery is scheduled to take place in two separate phases. The permit includes the emission sources and limits from both project phases.” Exhibit D, at p. 1. The equipment described in the Department of Health’s Permit to Construct includes **two** “[c]rude desalting and distillation unit[s],” each “with an estimated capacity” of “27,500 bbl/day (55,000 bbl/day total).” *Id.* at p. 2 (emphasis added).

**C. Meridian has told its investors and repeatedly told the news media it plans to build a 55,000 bpd refinery.**

28. Meridian has also explained to its own investors that it plans to construct a “55,000 barrel per day refinery.” Exhibit E, at pp. 1, 6, 14, 16. In a stock offering dated January 27, 2017, Meridian stated that it expects the full 55,000 bpd refinery to be operational within 18 to 24 months after the first phase has been built. *Id.* at p. 18.

29. Meridian has also stated in numerous press releases and statements to the news media that it intends to construct a 55,000 bpd refinery. Many of these press releases and news articles are currently posted on Meridian’s website and the Davis Refinery’s website. For ease of reference, Exhibit F includes a table of each of these web addresses as they currently exist on Meridian’s websites, along with cross-references to the same websites at a permanently archived location. By way of example, a news article posted on Meridian’s webpage, dated October 2, 2017,<sup>3</sup> states that “Meridian will begin by building the 27,500-bpd hydro-skimming facility called Davis Light.” The article then includes the following quote from Meridian Chairman and

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<sup>3</sup> Andrew White, Meridian Energy Group Making Progress on N.D. Refinery, BIC Magazine, <https://www.meridianenergygroupinc.com/meridian-featured-bic-magazine-october-issue/> (Oct. 2, 2017).

CEO William Prentice: “Once we have Davis Light in operation, we will finalize our plans for expanding the Davis Refinery to a full 55,000-bpd capacity, which will include equipment to turn the fuel oil into gasoline, diesel and jet fuel. . . . We call this expanded refinery ‘Davis Full.’”

30. In a news article published June 18, 2018, Meridian Chairman and CEO William Prentice is attributed as stating that Meridian “ha[s] to get something put in the ground soon. Work is expected to begin within the next five to 10 days.”<sup>4</sup>

**D. Meridian’s statements to the PSC contradict its numerous statements to the public, investors, and government agencies.**

31. Despite the numerous statements to other government agencies, investors, the press, and the public that Meridian plans to build a 55,000 bpd refinery, Meridian has inexplicably stated to the PSC that only plans to construct a 27,500 bpd refinery.

32. In a letter dated July 20, 2016 to the PSC, an attorney representing Meridian stated that “at this time Meridian is designing its refinery to be capable of refining twenty seven thousand five hundred (27,500) barrels per day. Further, at this time, there is no design in existence nor plans to propose a design for more than 27,500 barrels. This is not to suggest that in the future an addition to the facility will never be considered.” Exhibit G.

33. In a letter dated March 1, 2017 to Meridian, the PSC noted that Meridian had filed an application for a water appropriation permit based on a facility with a 55,000 bpd capacity. The PSC inquired as to whether Meridian would be filing an application for a siting certificate and if not, requested an explanation for its determination that the PSC did not have jurisdiction. Exhibit H.

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<sup>4</sup> Iain Woessner, *Meridian CEO Speaks About Permit Issued for Davis Refinery*, Grand Forks Herald, <https://webcache.googleusercontent.com/search?q=cache:9v2J8sTa0EMJ:https://www.wdaz.com/business/energy-and-mining/4462115-meridian-ceo-speaks-about-permit-issued-davis-refinery+&cd=1&hl=en&ct=clnk&gl=us> (June 18, 2018).

34. In a letter dated March 24, 2017 to the PSC, an attorney representing Meridian stated that Meridian “does not presently have any designs or plans to propose a Refinery with capacity beyond 27,500 barrels of oil per day,” though the letter admitted that there was a “possibility that such addition could be made at a later date.”<sup>5</sup> Exhibit I.

**E. Meridian plans to build its refinery without any review of critical siting concerns.**

35. The PSC is responsible for ensuring the energy conversion facilities are appropriately sited, and protecting areas such as national parks, historic sites of significance to both Native and non-native peoples, natural landmarks, recreational rivers, prime and unique farmland, irrigated land; ensuring that facilities are not located on flood plains (as this one might be), and other critical criteria.

36. Meridian’s attempts to circumvent the PSC’s siting laws are all-the-more concerning because the planned refinery would be sited approximately three miles from the South Unit of the Theodore Roosevelt National Park.

37. The Theodore Roosevelt National Park has significant cultural, historical, recreational, and ecological value.

38. The Theodore Roosevelt National Park is named for former President Theodore Roosevelt, the founder of the National Park System. The National Park preserves a piece of the badlands that played a “key role . . . in fostering his conservation ethics.”<sup>6</sup>

39. The cultural history of the land included in the Theodore Roosevelt National Park “extends back thousands of years” and many native peoples lived in and used the badlands, including the Mandan, Hidatsa, and Crow.<sup>7</sup> “Today, Theodore Roosevelt National Park remains

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<sup>5</sup> Letter from Lawrence Bender to Patrick Fahn, Director, Public Utilities Division, ND PSC (Mar. 24, 2017).

<sup>6</sup> *People*, National Park Service, <https://www.nps.gov/thro/learn/historyculture/people.htm>.

<sup>7</sup> *Id.*

a significant place for many Native Americans whose association with the land is rooted deeply in the past.”<sup>8</sup>

40. The Theodore Roosevelt National Park also has great environmental and ecological value. For example, “[a] wide diversity of animals make their home in Theodore Roosevelt National Park. An abundance of native grasses provide sustenance for grazing animals both large and small while the tapestry of different habitats attracts a great number of birds. The terrain of the badlands creates microclimates of warm, dry slopes, relatively cool and wet juniper woodlands, and riverbottoms.”<sup>9</sup>

41. Visitors come from across the country to see the majestic and rugged landscapes and diverse wildlife of the Theodore Roosevelt National Park. Members of the public enjoy camping, bicycling, canoeing and kayaking, cross-country skiing and snowshoeing, fishing, hiking, horseback riding, wildlife viewing, and star-gazing.

42. The Theodore Roosevelt National Park receives over 700,000 visitors annually.<sup>10</sup>

43. The Theodore Roosevelt National Park also creates substantial economic benefits. According to the National Park Service, “[i]n 2017, 708 thousand park visitors spent an estimated \$43.9 million in local gateway regions while visiting Theodore Roosevelt National Park. These expenditures supported a total of 552 jobs, \$16.7 million in labor income, \$27.4 million in value added, and \$47.2 million in economic output in local gateway economies surrounding Theodore Roosevelt National Park.”<sup>11</sup>

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<sup>8</sup> *Cultural History*, National Park Service, <https://www.nps.gov/thro/learn/historyculture/cultural-history.htm>.

<sup>9</sup> *Animals*, National Park Service, <https://www.nps.gov/thro/learn/nature/animals.htm>.

<sup>10</sup> *Theodore Roosevelt National Park Statistics*, National Park Service, [https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20\(1904%20-%20Last%20Calendar%20Year\)?Park=THRO](https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20(1904%20-%20Last%20Calendar%20Year)?Park=THRO).

<sup>11</sup> *Visitor Spending Effects - Economic Contributions of National Park Visitor Spending*, National Park Service, <https://www.nps.gov/subjects/socialscience/vse.htm> (select “Park Economies” and select “Theodore Roosevelt National Park”) (2018).

44. Theodore Roosevelt National Park is a designated Clean Air Act Class I area, warranting the highest level of air quality protection under law, including the valued resource of visibility.

## V. COUNT I

45. Meridian is required to obtain a certificate of site compatibility from the PSC prior to construction of an oil refinery with a capacity of 50,000 bpd or more. N.D.C.C. § 49-22.1-04.

46. Based on Meridian's statements, Meridian plans to construct an oil refinery with a capacity of more than 50,000 bpd. Meridian plans to construct the refinery in two phases. The first phase would have a capacity of fewer than 50,000 bpd, but would soon after be expanded beyond the 50,000 bpd threshold.

47. Based on Meridian's statements, Meridian has not obtained or applied for a certificate of site compatibility from the PSC.

48. Based on Meridian's statements, Meridian intends to move forward with the construction of the first phase of the planned oil refinery without obtaining a certificate of site compatibility from the PSC.

49. The final Permit to Construct has been issued and based on Meridian's statements, construction of the planned oil refinery will begin in a matter of days or weeks.

50. Meridian is therefore currently or soon to be in violation of North Dakota law, which requires that a certificate of site compatibility be obtained prior to the construction of an oil refinery with a capacity of 50,000 bpd or more. N.D.C.C. § 49-22.1-04.

51. ELPC's and DRC's members' right to participate in the siting review process would be violated if Meridian begins construction without undergoing siting review by the PSC,

which requires a public hearing and the opportunity for public input on the appropriateness of the site.

52. ELPC's and DRC's members' right to benefit from a full and fair siting review by the PSC would also be violated if the refinery is constructed without a certificate of site approval.

53. ELPC's and DRC's members' use and enjoyment of the surrounding area would also be significantly impacted if the oil refinery is built as proposed. For example, the planned site for the oil refinery is located approximately three miles from the South Unit of the Theodore Roosevelt National Park. ELPC's and DRC's members' use and enjoyment of the Theodore Roosevelt National Park would be significantly impacted if the oil refinery is built as proposed. Air, noise, and light pollution, as well as aesthetic impacts, would all degrade the visitor experience at Theodore Roosevelt National Park.

## **VI. RELIEF REQUESTED**

WHEREFORE, ELPC and DRC request the PSC take the following actions:

1. Order an expedited hearing on this complaint, pursuant to N.D.C.C. §§ 49-02-02(5) and 49-05-03;
2. Issue an order declaring that Meridian's Davis Refinery is subject to N.D.C.C. § 49-22.1-04 and that PSC has jurisdiction over siting of the Davis Refinery;
3. Issue an order declaring that, if Meridian begins construction of its planned oil refinery, it will be in violation of N.D.C.C. § 49-22.1-04 for beginning construction of a liquid energy conversion facility without having obtained a certificate of site compatibility from the PSC;

4. Issue a cease and desist order to Meridian to refrain from taking any construction activity on its planned Davis Refinery unless and until Meridian obtains a certificate of site compatibility, pursuant to N.D.C.C. § 49-02-02(2);

5. If necessary, compel obedience to its orders by mandamus or injunctive proceedings in a court of proper jurisdiction, pursuant to N.D.C.C. §§ 49-02-02(4) and 49-22.1-20(5), in order to preserve its jurisdiction;

6. Provide any other relief as justice requires.

Dated this 29th day of June, 2018.

Respectfully submitted,

**BRAATEN LAW FIRM**

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